Commentary
December 1996

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Leon R. Kass & Nelson Lund

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Not the Metropolitan Opera
Terry Teachout

Books in Review
Gary Rosen • David G. Roskies • J. Bottum • Peter L. Berger

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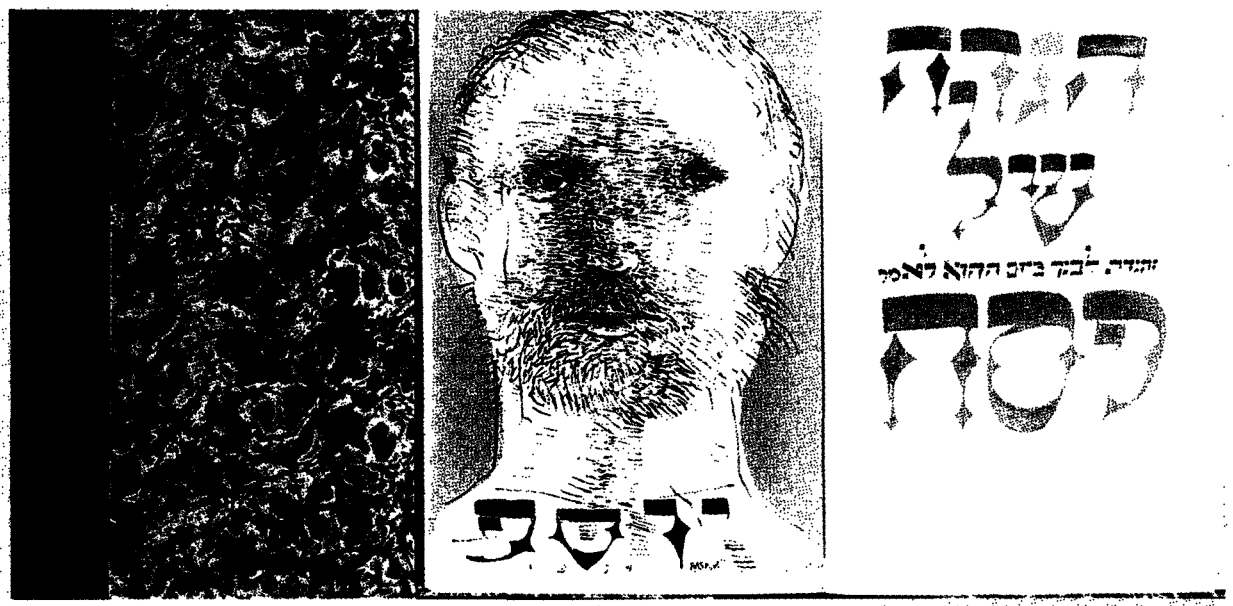

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December 1996

Letters from Readers

The Schools

To the Editor:

Nowhere in "Can the Schools Be Saved?" [September] does Chester E. Finn, Jr. set forth his own schoolhouse experiences. It is noted that he was once an Assistant Secretary of Education, but there is no mention of when he served, for how long, or under whose administration(s). He is either exceedingly modest or his politically-appointed position in the federal bureaucracy he criticizes is the basis of his expertise.

I have devoted about 40 years of my life to educating children and serving several diverse communities in which they live. I was a licensed high-school science teacher, an elementary-school teacher, an assistant principal in both elementary and junior-high schools, and an elementary-school principal in New York City for fourteen years. . . .

Blaming civil-service reform for the excesses practiced by politicians, teachers' unions, community activists, commercial interests, etc., as Mr. Finn does, is like blaming penicillin for curing the infection of a man who, once again healthy, becomes a murderer. Civil-service reform took education and educators out of the realm of backroom political patronage and intrigue. It created minimum requirements for teacher preparation, training, classroom performance, and accountability. . . . Whatever abuses of power that developed occurred in spite of and not because of civil-service reform. Federal intervention became necessary because local and state groups relaxed their vigilance, permitted the attenuation of accountability, and began exploiting their own power base.

Mr. Finn's assertion that "the most damaging changes in public education came after World War II" is so far off the mark it is almost laughable. Among the myriad unprecedented gains made during that most exciting era:

- A grateful nation, through the "GI Bill," gave thousands of veterans an opportunity to earn a college degree they would never have otherwise been able to obtain. Many of these veterans received a degree in education and became the teachers of the 40's, 50's, 60's, and 70's.
- *Brown* v. *Board of Education* finally gave children access to schools that had been denied them because of the color of their skin.
- Children of poverty came a step closer to a level playing field by gaining access to nutritious meals.
- Corporal punishment was abolished.
- Student loans were made available to pursue higher education.
- Millions of children discovered art, sculpture, symphony, opera, ballet, Shakespeare, space exploration, the panoply of cultures, and the wonders of electronics through generous federal grants.
- New schools, colleges, libraries, and community facilities were built.
- Universities expanded, reached out, and connected with communities, schools, and parents. . . .

Never did we have more hope and experience more glory.

Having led his readers through the Finn House of Public-Education Horrors, Mr. Finn concludes his tour with modestly offered solutions. "What I have," he says, "is not so much a blueprint as a set of principles. . . ." I suspect he does not offer specifics because he does not have any. And the proposals he does offer are ones that have been repeated in professional and lay literature, in teacher-training classrooms, lecture halls, and the mass media for nearly 100 years. Which brings us full circle on an unproductive journey.

Matthew Schwartz
Laguna Hills, California

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TO THE EDITOR:

On one seminal point Chester E. Finn, Jr.'s terms are ambiguous, and I am not sure whether he has gone over the precipice. He writes:

> [H]ere I side with the advocates of vouchers. . . . [T]he schools would also be accountable to their clients, who would be free to select among them and never forced against their will to attend a bad one.

Does Mr. Finn here endorse government vouchers for private and parochial schools? Wilfred M. McClay, also writing in the September issue ["Of 'Rats' and Women"], sees the Faustian bargain in this arrangement, even when private schools accept only indirect support:

> [T]here will be no stopping Uncle Sam from jerking their chain, whenever he wishes and for whatever reason. . . .

Regarding Uncle Sam's jerking the chain . . . , let us look at judicial and legislative history. On February 28, 1984, the Supreme Court ruled in *Grove City* v. *Bell* that federal aid directed to students who then attended a university made that university a "recipient of federal financial assistance," and therefore obligated to comply with Title IX regulations. The Court ruled that

> Title IX applies to a college that accepts no direct federal assistance but that enrolls students who receive federal grants that must be used for educational purposes.

But this recipiency was "program-specific," that is, only the specific program receiving federal aid, not the entire college, was required to comply with Title IX. The Court concluded that

> the receipt of BEOG's [federal grants] by some of Grove City's students does not trigger institution-wide coverage under Title IX. In purpose and effect, BEOG's represent federal assistance to the college's own financial-aid program.

On March 22, 1988, however, Congress, under the Civil Rights Restoration Act, broadened the term "recipient" to include the entire school. The Title IX language now reads:

> [T]he terms "program or activity" and "program" mean *all* of the operations of . . . a college, university, or . . . a local educational agency, system of vocational education, or other school system. [Emphasis added]

Note the inclusion of elementary and secondary schools.

Whenever critics attack my position on government vouchers for private and parochial schools, I ask them to cite any Supreme Court or legislative action that supersedes or negates the judicial or legislative citations given above. No one has been able to do so. It defies history and common sense to argue that the recipient of government money can forever restrict the terms of the giver; it is a triumph of hope over experience to believe that whoever pays the piper can forever be excluded from calling the tune.

RONALD L. TROWBRIDGE
Hillsdale College
Hillsdale, Michigan

TO THE EDITOR:

Although I do not disagree with all of Chester E. Finn, Jr.'s prescriptions for improving public education, I must conclude that he simply does not understand the underlying problems facing public education in this country. . . .

The greatest problem is the seemingly endless willingness of the federal judiciary to interfere in the daily operations of the schools and to substitute its ideologically-driven view of the world for the experience-driven decisions of public-school teachers and administrators. The Fourteenth Amendment to the U.S. Constitution has three clauses, two of which, the equal-protection clause and the due-process clause, have been used by the federal judiciary to interfere in the most basic operations of the schools. . . .

When one observes what the courts have done to the operation of the public schools, the question ceases to be why the schools are as bad as they are, but how they can be as good as they are when they are operating under such an irrational system of regulation.

Let me cite some examples. In the early 1970's, the Black Student Union (BSU) at the University of Kansas staged a series of protests aimed at disrupting the school. One BSU member began to spray paint on the front of the library. A white student attempted to stop the black student. For his efforts, the white student was shot in the neck. Luckily, he survived.

The University of Kansas expelled the black student, who then sued the university, claiming his "constitutional rights" had been violated. The federal court sided with the student and held that the doctrine of procedural due process entitled him to a hearing within a reasonable amount of time, or to be readmitted. The school then granted him a hearing and expelled him.

In this case the university won. But at what cost? The student had committed, at a minimum, three crimes: malicious mischief (vandalism), assault with a deadly weapon, and attempted murder. Yet to exclude him from the university, the school had to go to federal court and then hold its own hearing. . . .

Other cases are equally bizarre. In the 1980's, a female student sued the schools in northern Virginia seeking to be permitted to play football. After her inevitable victory, she was allowed to try out for the team. In her first scrimmage, the boys piled on and she suffered serious internal injuries. She then turned around and sued the schools, claiming they had not explained to her that football was dangerous. . . .

Here in California we are now having lawsuits over grades. A girl who received straight A's up until her last semester goes to federal court when one of her teachers gives her a B.

There is no question in my mind that if we were to remove the constant threat of litigation in the federal courts from the administration of the schools, the system would begin to heal itself overnight. . . .

SUSAN JORDAN
Los Angeles, California

TO THE EDITOR:

In his list of post-World War II changes in public education, Chester E. Finn, Jr. misses what may be the most important one. As

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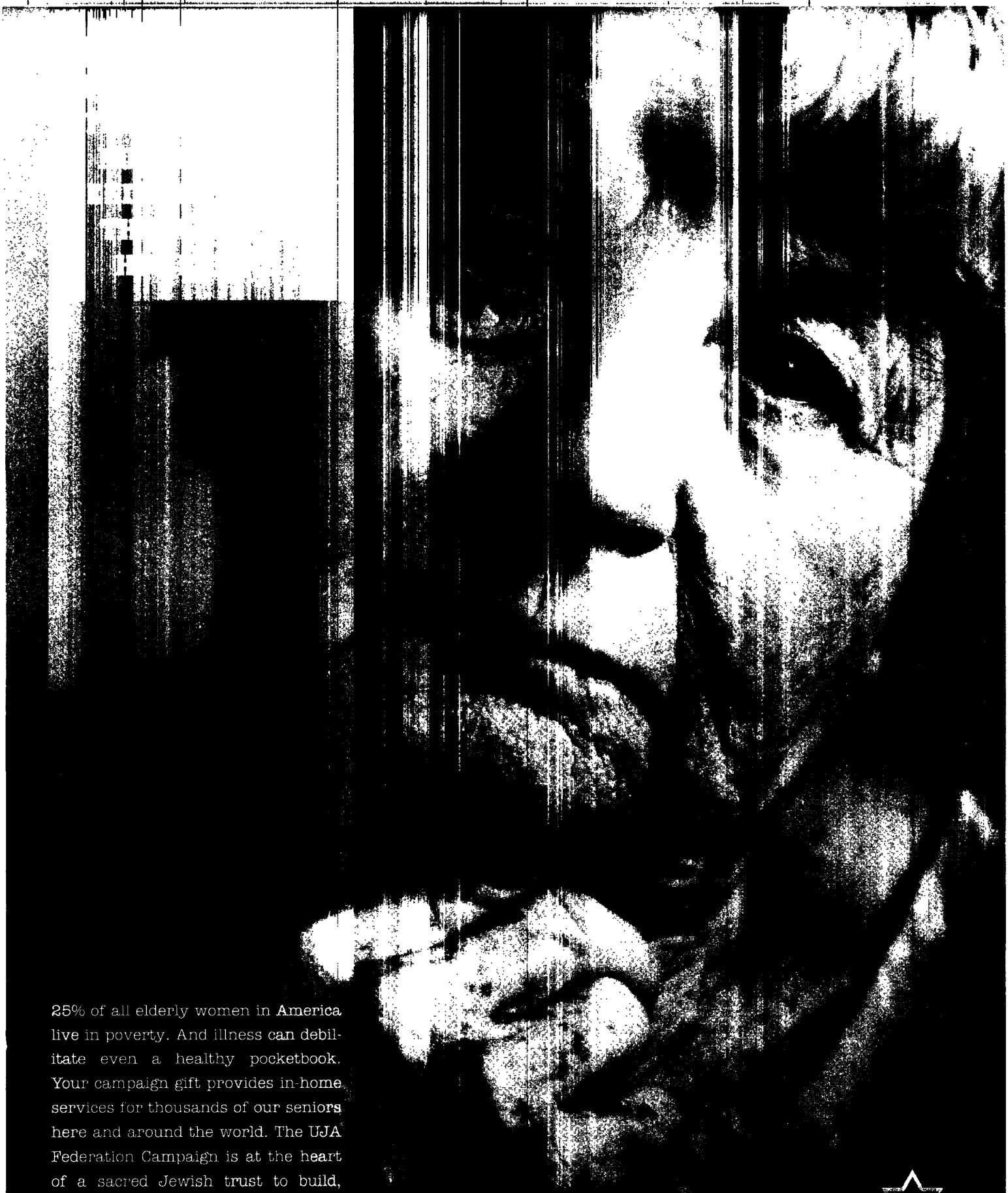

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Walter A. McDougall, in "What Johnny Still Won't Know About History" [COMMENTARY, July], has pointed out:

> Nothing in our time has done as much damage to the quality of teaching, especially at the grade-school level, as the loss of all those intelligent women who once upon a time stayed home with their children or took low-paying jobs as teachers, but who now pursue careers in government, business, the universities, and law.

In any litany of the ills of the public schools, what Mr. McDougall says in the above paragraph should come first. . . .

MICHAEL J. LYNCH
Toledo, Ohio

CHESTER E. FINN, JR. writes:

That Matthew Schwartz spent many years within the education system as we know it is evident both from his autobiographical summary and from his seeming complacency with that system. I view the present performance of U.S. primary and secondary schools with as much outrage as pride. (Higher education, whence many of Mr. Schwartz's examples come, is a more complex tale.) He evidently belongs to the "things are basically OK" party.

Of course the postwar period brought gains as well as losses. Mr. Schwartz notes eight of the former. I cited three of the latter—federal mischief, union mischief, and intellectual mischief—and explained in each case how decent motives and grievances deteriorated into new assaults on the schools. If Mr. Schwartz sincerely wants a detailed blueprint for radically changing the present situation, which I somehow doubt, there are any number of books he might read, including not just my own but also E.D. Hirsch's splendid new *The Schools We Need.*

Ronald L. Trowbridge is correct about the piper. That is why a handful of colleges (including his own) have resisted all forms of federal funding and why some private schools would eschew government vouchers if and when these become widely available.

Insisting that private education remain wholly independent is an honorable position, but it carries a painful trade-off, virtually guaranteeing that few low-income students—the youngsters least well-served by today's public schools—will ever enjoy the educational benefits of nongovernment schools. I support voucher and scholarship schemes focused on these children because I believe there is a powerful public interest in getting them a decent education. A number of private schools stand ready to serve them (as do such innovative educational hybrids as "charter" schools). But I respect the right of schools that agree with Mr. Trowbridge to opt for maximum freedom instead.

Susan Jordan has accurately expanded an important point that I merely alluded to. I welcome the addition, noting only that a goodly portion of the judicial activism she cites has been quietly embraced by timid educators and elected officials who would rather be able to say "the judge made me do it" than shoulder responsibility for making politically sticky decisions themselves.

Michael J. Lynch and Walter A. McDougall are right that the widening of career opportunities for women has drawn much talent out of the classroom. But there is little point in weeping about this. In any case, as I watch lines of capable people, men and women alike, form to apply for teaching jobs in the now over-400 charter schools, it appears that there is still plenty of talent available. What we need are more schools worth teaching in and reasonable rules for gaining entry to them.

Duke Ellington

TO THE EDITOR:

I am responding to Terry Teachout's "(Over)praising Duke Ellington" [September] as one who has known Albert Murray, Stanley Crouch, and Wynton Marsalis both privately and professionally. But that is far from the sole motivation behind this letter. Long before I met them I was involved in myriad jazz-repertory projects of my own, many of which included detailed study and performance of Duke Ellington's music. I have also worked with many Ellingtonians, including Russell Procope, Louis Bellson, Sonny Greer, Britt Woodman, Norris Turney, Aaron Bell, and Harold Ashby. It is from my vantage point as a professional musician and 25-year student of Duke Ellington's music and its criticism that I challenge the validity of Mr. Teachout's dubious reading of Ellington.

Mr. Teachout's byline states that he was a professional bassist for ten years. With whom has he played, and, more to the point, where is the commensurate musical insight to go along with this credential? . . . For him to damn the writing of both Stanley Crouch and Albert Murray on music in general, and on Ellington specifically, as "amateurish" in the face of their original and challenging work strains credulity. As a purported scholar, Mr. Teachout should be able to recognize (whether he agrees with their conclusions or not) the breadth and depth of their contributions. What is truly behind his belittling of serious criticism such as Crouch's notes to the album *Thelonious at the Five Spot* (written almost twenty years ago, and containing more original thinking than anything that has come from Mr. Teachout's pen); or Crouch's recent essay on Ellington; . . . or Murray's recent work on Ellington, Armstrong, and Ernest Hemingway (and the blues)? Mr. Teachout, in the course of a distorted essay, forces one to look for different, nonmusical motives. Indeed, for one who hurled the "racialist" epithet so eagerly in his September 1995 COMMENTARY article, "The Color of Jazz," Mr. Teachout himself conjures up an unmistakable feeling of racism. . . .

Mr. Teachout makes several assertions that may be accepted at face value by the uninitiated reader, but would be dismissed out of hand by any serious student of jazz. To equate George Gershwin's mastery of the "miniature" with Ellington's is disingenuous. How can Mr. Teachout compare the depth of musical allusion, counterpoint, orchestration, and

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harmonic and rhythmic originality in "Diminuendo and Crescendo in Blue" (or for that matter, the shorter "Showboat Shuffle") with one of Gershwin's tunes? Gershwin's "Our Love is Here to Stay," for example, is a melodically superior tune but one whose musical profile in terms of development—essential to the discussion of any composer's worth—is virtually nil. Where in Gershwin is the ironic humor and dialogue with the evolution of dance-band traditions to be found in "Giddybug Gallop"? . . .

A statement such as "Part of what led Ellington to employ better-trained musical collaborators was his own lack of technical assurance"—in the face of the hundreds of exquisitely detailed orchestral scores in Ellington's hand, now housed at the Smithsonian Institution (hundreds of which were written while Billy Strayhorn was still in high school)—represents what is either a willful distortion or complete ignorance of the facts on Mr. Teachout's part.

In addition, how can Mr. Teachout challenge Stanley Crouch's assertion that Ellington wrote "masterpieces, long or short, in every decade"? What else would he call "The Tattooed Bride," "Princess Blue," "Track 360," "The Far East Suite," "Banquet Scene (Timon of Athens)," "The Goutelas Suite," or "The Toga Brava Suite"?

And finally, to assert that "there is nothing to be learned by directly comparing a three-minute blues like Ellington's 'Ko-Ko' with a 45-minute symphony by [Aaron] Copland" makes me wish I had Mr. Teachout in one of my classes, for there is much to be savored (and believe me, not all to Copland's benefit) in juxtaposing how these two masters deal with the same musical imperatives—narrative flow, comprehensibility, and orchestration. . . .

If Mr. Teachout is really concerned with those whose reputations exceed their accomplishments, couldn't he find better targets than Duke Ellington? We are dealing with the legacy of a man who was refused a Pulitzer Prize just three decades ago, who is still largely left out of discussions of great American composers, and whose crowning achievement in the "long form" Mr. Teachout makes such a fetish of, *Black, Brown, and Beige*, was misunderstood by virtually everyone who reviewed it at the time—excepting Mike Levin, who took the time to listen repeatedly to an acetate of the performance before writing a measured and positive review in *DownBeat*. Would that Mr. Teachout had the same patience and insight.

LOREN SCHOENBERG
New York City

TO THE EDITOR:

. . . Terry Teachout surely sees the circular nature of the argument he marshals against Duke Ellington and his champions: the greatest composers were premodern Europeans; Ellington does not compose like them and never even studied them; therefore, he does not write great music. The argument closes out any critique of its original premise.

But as Mr. Teachout must know by now, the attribution of artistic value has very little to do with what is in a work of art and everything to do with who is doing the attributing. When Mr. Teachout charges that Stanley Crouch and Albert Murray write "race-conscious" criticism, he neglects to mention that his own white European aesthetic is every bit as race-based as anything in the writings of Crouch or Murray.

I cannot help noticing that even in the passages Mr. Teachout himself cites, the "race-conscious" Crouch and Murray heartily celebrate the works of William Faulkner, Mark Twain, John Ford, and Buster Keaton. Cultural conservatives like Mr. Teachout, who present themselves as color-blind, are seldom as generous in praising Ralph Ellison, Toni Morrison, Charlie Parker, or Duke Ellington.

Because of his limited and limiting notions of what constitutes serious music, Mr. Teachout does not acknowledge that Duke Ellington did in fact study music in venues just as rigorous and competitive as any conservatory. Mr. Teachout justifiably praises Mark Tucker's essential books on Ellington, but he ignores the scrupulous attention that Tucker pays to Ellington's apprenticeships with Doc Perry, Henry Grant, Will Vodery, and a host of working pianists in Washington and New York. Although he disparages as unscholarly the Ellington biographies by Jon Hasse, James Lincoln Collier, Derek Jewell, and Mercer Ellington, Mr. Teachout ignores the passages in all these books, as well as in Tucker's, that describe Ellington's interactions with the African-American composers and performers he called his teachers.

Much of what makes Ellington's short pieces so

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compelling can also be heard in his longer works. Even if these works do not have the same structure as a symphony by Aaron Copland or Johannes Brahms, they have numerous felicities that the "European" works completely lack. Indeed, a composer writing for anonymous players in a symphony orchestra can never achieve the extraordinary blend of musical styles that Ellington always created with his own ensemble of unique musical voices. A strong case can be made in defense of either tradition, but there are no universal aesthetic rules to prove that one is superior to the other.

Mr. Teachout should examine his own preconceptions before he attacks others for failing to make what he calls an "objective appraisal" of Ellington's work.

KRIN GABBARD
New York City

TO THE EDITOR:

However wrongheaded Terry Teachout may be about Duke Ellington, he is just plain factually wrong in the few points he makes about my biography of Billy Strayhorn, *Lush Life*. (1) My name is spelled Hajdu. (2) The book does indeed include documentation for all the instances in which my attributions of authorship differ from the historical record; it appears under the heading "Notes on Music Research" on pp. 274-75. (3) I made no claim that Billy Strayhorn wrote part of Duke Ellington's "The Tattooed Bride"; I referred to Strayhorn doing an arrangement of the piece. The distinction is a critical one in orchestral jazz. (4) The score of "A Tone Parallel to Harlem" that I have studied is not among Strayhorn's private papers; it is, as I noted, in the Duke Ellington archives of the Smithsonian Institution.

As for Mr. Teachout's conclusions about both Strayhorn and Ellington, they have no credibility in an article with so many mistakes in so little space. Manipulating errors and misrepresentations in the name of revisionism, Mr. Teachout produces exactly what he sees in the work of Albert Murray and Stanley Crouch: propaganda.

DAVID HAJDU
New York City

TO THE EDITOR:

In his article, Terry Teachout quotes a statement of Lawrence Brown, Duke Ellington's trombonist. "I don't consider you a composer," he said to Ellington, "you are a compiler." This reminded me of the time my young friend David Sager, himself a jazz trombonist, went to visit Lawrence Brown at his home in Los Angeles.

Sad to say, Lawrence was mortally ill at the time, but he was strong enough to sit next to David on the front porch . . . and answer some questions about the Ellington band. Lawrence's brother Harold, who was taking care of him, put on an LP of vintage Ellington from the mid-30's, the period that produced "Merry Go Round" and other well-known numbers from the Ellington repertory. As Lawrence and David listened to the music coming through the open windows, Harold, who was standing in the front doorway, would say, "Oh, Otto Hardwicke wrote that one," or "Johnny Hodges wrote *that* one."

After this litany went on for a while, David finally said to Harold, "Well, what did *Duke* write?" To which Harold replied, in a rather bitter, disgusted tone, "Duke didn't write s---t."

JEROME S. SHIPMAN
Potomac, Maryland

TO THE EDITOR:

As a long-time observer of the Ellington mystique—beginning in 1928, when I listened to broadcasts from the Cotton Club three and four nights a week—I found Terry Teachout's article . . . not only on target and fair but also refreshingly free from the *ipse dixits* and spe-

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cial pleading that mar so much of the critical writing on this American composer.

Mr. Teachout helpfully cites Mark Tucker's *Ellington: The Early Years* and *The Duke Ellington Reader* as informative references. Two other works I have studied also deal insightfully with the aesthetic idiosyncrasies of Ellington's music: *Duke Ellington* (1987) and *Jazz: The American Theme Song* (1993), both by James Lincoln Collier, himself a working musician. In the latter source, Collier says:

> [T]he very limitation of the dance-band form kept Ellington's weakness for lushness and grandiosity in check. They forced him . . . to do what he did best [short jazz compositions like "Black and Tan Fantasy" . . .], perhaps did better than any other jazz musician who ever lived.

NORMAN P. GENTIEU
Philadelphia, Pennsylvania

TO THE EDITOR:

Writing "(Over)praising Duke Ellington" took courage. The revisionist jazz historians have elevated many minor individuals and forgotten the old greats.

DAVID LITOWSKY
Houston, Texas

TERRY TEACHOUT writes:

Loren Schoenberg is, of course, entitled to his opinions. But given the fact that he has an ongoing professional relationship with Wynton Marsalis and Stanley Crouch (among other things, he has been engaged on several occasions to conduct the Lincoln Center Jazz Orchestra), it might be more accurate to say that his employers are entitled to his opinions.

As for the merits of those opinions, I have already dealt with them in detail both in "(Over)praising Duke Ellington" and "The Color of Jazz," and see no reason to restate here the various points which Mr. Schoenberg has deliberately and flagrantly misrepresented in his letter, just as he misrepresented the argument of "The Color of Jazz" in his previous letter to COMMENTARY [January].

Krin Gabbard is arguing with himself, not me. The Duke Ellington about whom I wrote was a "great musician" who created "music of extraordinary individuality." In my opinion, that praise is quite generous indeed. To the limited extent that Mr. Gabbard is engaged with what I wrote, he has it backward. No slave-master *made* Ellington grapple with the larger forms. He did it for reasons of his own—in large part, I suspect, because he thought he would not be taken seriously by white critics unless he wrote large-scale works—and those reasons led him astray: it was only when he mistakenly bowed to the "white European aesthetic" and attempted to compose in an idiom he did not understand that he came to grief. In any case, the uneven quality of his large-scale works never stopped white critics from lavishly praising the rest of his output, nor has it prevented Ellington from being universally acknowledged as a major figure in American music.

Needless to say, Mr. Gabbard knows nothing of what I think about Ralph Ellison, Toni Morrison, or Charlie Parker—about none of whom I have ever had occasion to write. What matters to me is why Duke Ellington's longer pieces are so much less good than his shorter ones. But as for the alleged color-blindness of Stanley Crouch and Albert Murray, suffice it to say that their endless lists of white cultural icons never include jazz musicians.

Finally, I venture to assert that I, too, know something about the "venues just as rigorous and competitive as any conservatory" of which Mr. Gabbard speaks: I played jazz professionally for many years without ever having studied it academically, and my "teachers" came in all colors. The only thing they did not teach me was how to write symphonies—but, then, that was not why I went to them.

I did misspell David Hajdu's last name, for which I apologize. Such things happen from time to time: Mr. Hajdu misspells various proper names (Bill Finegan, Erroll Garner) and song titles ("Diga Diga Doo," "Jumpin' Punkins," "Star Dust") in his book. That, of course, does not excuse my own mistake.

For the rest, though, Mr. Hajdu should have left well enough alone. Had I actually been reviewing his book, I would have said explicitly what has been apparent to all trained musicians who have read it: *Lush Life* is the work of a nonmusician who, like Albert Murray and Stanley Crouch, is either ignorant of or cannot comprehend the basic issues of musical scholarship relevant to his subject. The most cursory examination of the book makes this clear, and Mr. Hajdu's letter makes it clearer still.

A case in point is his discussion of "The Tattooed Bride." He says in *Lush Life* that Strayhorn helped fashion extended new arrangements (again unacknowledged) of Ellington compositions ("Mood Indigo," "Sophisticated Lady," "The Tattooed Bride," and "Solitude") to be recorded for an LP titled *Masterpieces by Ellington*; the pieces range from eight to fifteen minutes in length, and each is a distanced reconsideration of an Ellington piece, expanded with mercurial shifts in tempo and timbre.

To disentangle the various factual misstatements and musical misunderstandings contained in this single sentence—some of which also appear to contradict what Mr. Hajdu says in his letter—is no easy task. Briefly:

1. The version of "The Tattooed Bride" heard on *Masterpieces by Ellington* was not "a distanced reconsideration of an [earlier] Ellington piece": it was, rather, the first recording of a new piece, credited solely to Duke Ellington.

2. In his letter, Mr. Hajdu seems to be using the term "arrangement" as a synonym for "orchestration." Serious composers, whether of classical music or jazz, normally orchestrate their own music—most especially those composers whose command of orchestral color is considered a key aspect of their style, as was the case with Duke Ellington. Even if Billy Strayhorn's only contribution to "The Tattooed Bride" had been to orchestrate it for the Ellington band, he would perforce have played a highly significant role in its composition, one for which he should have received credit.

3. In jazz, however, the

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terms "arranger" and "arrangement" frequently imply other things, depending on the context in which they are used. A song such as "Solitude," for instance, can be "arranged" in an infinite number of ways—as a waltz, an up-tempo number, a theme and variations, a bossa nova—without calling its original authorship into question. But "The Tattooed Bride" is not a song: it is an extended instrumental composition, whose format and structure are part and parcel of its very being.

If, as Mr. Hajdu seems to be claiming in his book, Strayhorn assisted Ellington in "expanding" "The Tattooed Bride" "with mercurial shifts in tempo and timbre," it follows that he not only "helped fashion" the piece but "wrote part" of it—that he was, in fact, its co-composer. Mr. Hajdu's book and letter reveal that he does not grasp this elementary distinction, which means he is not competent to discuss the nature of Strayhorn's contribution to "The Tattooed Bride."

4. Mr. Hajdu says his book contains "documentation for all the instances in which my attributions of authorship differ from the historical record." But "The Tattooed Bride" is not listed in his two-page-long "Notes on Music Research," nor is any source cited in the footnotes for the passage quoted above. Presumably Mr. Hajdu has examined the original score of "The Tattooed Bride" in the Ellington archives, but he does not say so, just as he tells us little or nothing about what he actually found in his perusal of the Ellington and Strayhorn papers. Does "The Tattooed Bride" exist in manuscript? If so, is it a rough sketch, a short score, or a full score? Is the surviving manuscript material in the handwriting of Ellington or Strayhorn, or of both men—or of copyists who may themselves have played a role in its scoring? Do variant versions exist? Such questions are not trivial, but go directly to the heart of the problems of attribution posed by the music of Duke Ellington; since Mr. Hajdu does not allude to them in his discussion of "The Tattooed Bride," one must conclude that he is unaware of their relevance.

This one example—which is, alas, typical of the book as a whole—shows why *Lush Life* cannot be taken seriously as a scholarly discussion of the music of Billy Strayhorn. Its value lies exclusively in the interviews Mr. Hajdu conducted with Strayhorn's family, friends, and associates, which will henceforth be cited as indispensable primary sources.

I thank Jerome S. Shipman, Norman P. Gentieu, and David Litowsky for their kind letters.

Jabotinsky

TO THE EDITOR:

Midge Decter's fine review of *Lone Wolf: A Biography of Vladimir (Ze'ev) Jabotinsky* by Shmuel Katz [Books in Review, July] raises an interesting question, one which has been the subject of heated debate for decades: to what extent did Jabotinsky foresee the tragedy looming over East European Jewry?

"Jabotinsky," claims Miss Decter, "glimpsed" the Holocaust. However, in *Lone Wolf*, Shmuel Katz reveals in considerable detail that Jabotinsky did more than merely "glimpse" the unspeakable fate that befell the Jews of Europe. In fact, as early as 1897 Jabotinsky predicted a horrible fate for the Jews of Europe ("a St. Bartholomew's night") and warned of this repeatedly during his numerous journeys to Eastern Europe in the second half of the 1930's.

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the "anti-Semitism of things," he claimed, posed the greatest danger to the Jew. At the core of this thesis was the deep-seated belief that the socio-economic position of East European Jewry was akin to a terminal disease. The only cure was amputation—removal from what he called the "Zone of Distress."...

Of course, Jabotinsky certainly did not foresee that the Germans would subjugate most of East Central Europe and destroy the centuries-old Jewish civilization that flourished there—the heartland of world Jewry. He actually failed to predict the outbreak of the war (an error which haunted him to his dying day). But what he did forecast and with astonishing, even chilling, accuracy was that the indigenous populations of Eastern Europe posed a grave threat to the Jewish communities there....

The motivation of "ordinary" East Europeans differed, perhaps, from that of "ordinary" Germans—but the result was much the same. Without the Germans, the Holocaust—the single-minded, systematic destruction and despoliation of a people—would not have occurred. But without the murderous hostility of Europeans of many nationalities (including West Europeans) the killing could not have been carried out in such thorough fashion and its scope would have been reduced.

Throughout Eastern Europe in the years preceding the war, the position of the Jew had been deteriorating at an alarming rate. Jabotinsky believed that in the long term it was untenable. In 1939, assessing the situation, he wrote:

> I tell you, dear colleagues, that this means going forward to destruction, D-E-S-T-R-U-C-T-I-O-N. Learn the word by heart; and God grant that I am mistaken....

In forecasting that doom, Jabotinsky was not alone. Chaim Weizmann also sounded a pessimistic note, heralding the imminent demise of East European Jewry. But Weizmann was content to strive for the rescue of scholars and academics—and to accept, grudgingly perhaps, the bitter fate of the masses, whom he characterized, in his testimony to the Peel Commission, convened by the British in 1936 to investigate the cause of Arab riots, as "dust, moral and economic dust in a cruel world." In 1938, during his tenure as League of Nations High Commissioner for German refugees, James G. McDonald met with Weizmann. McDonald described the meeting in his memoirs:

> I was appalled but not surprised at [Weizmann's] ruthless analysis of the fate of the Jewish communities in Germany and Eastern Europe. He foresaw the extermination of millions of his fellow Jews.... "If before I die," he said, "there are half a million Jews in Palestine, I shall be content because I know that this 'saving remnant' will survive. They, not the millions in the Diaspora, are what really matter."

It was that "dust" of innumerable and often forgotten towns and villages of the heartland of Jewish Europe that Jabotinsky tried to rescue—the *stamm Yiden* who were sitting on the base of the volcano and had nowhere to flee—and were not prepared to accept the fact that they were in mortal danger.

One eyewitness of those times, Moshe Prywes, wrote:

> Jabotinsky's arrival in Warsaw provoked unparalleled excitement in the Jewish community. The Cirque, an auditorium five stories high,... had been rented, but an overflow crowd filled it beyond capacity.... Once Jabotinsky launched into his address, no one budged.... In impeccable Yiddish, he kept everyone spellbound....
>
> In the late 30's Jabotinsky would emerge as a latter-day prophet, preaching night after night to Jewish audiences.... His message was always the same: "Europe is a trap. Get out or get killed."... Although his words were wildly applauded, only a tiny fraction of those who cheered took Jabotinsky's advice seriously.

Many of those who did heed Jabotinsky's warning (he called for escape from Europe to become the "national sport of the Jews") were thwarted in their efforts, first of all by the Zionist establishment, which launched a worldwide campaign against Jabotinsky..., and then by the British.

In *Lone Wolf* Shmuel Katz provides a comprehensive description of British efforts, diplomatic and military, to hound Jews who attempted to flee Europe. Ironically, the first shots fired by the Royal Navy were not aimed at a German warship but at a vessel carrying "illegal" immigrants to Palestine....

Finally, on a lighter note, Miss Decter is mistaken in her assertion that Katz omitted a reference to Jabotinsky's sister's husband and that Jabotinsky's nephew Johnny appears to have been a product of "immaculate conception." In fact, the arrival of Johnny did not take place in a manger nor was his mother married to a celibate carpenter. On pp. 42-43 Katz tells us that while Jabotinsky was studying in Rome his sister Tamar "had married a young doctor who, however, had died a bare eighteen months after the marriage, leaving her with a four-month-old boy."

LAURENCE WEINBAUM
Jaffa, Israel

TO THE EDITOR:

Midge Decter correctly stresses the importance of Shmuel Katz's biography of Ze'ev Jabotinsky and the nobility of the man. One point, though, needs considerable qualification. She speaks of the Jewish people's "ancient land, then called Palestine." At the time of which she is writing, the time when Jabotinsky became a Zionist around 1900, Palestine existed only in the vocabulary of the West and in Western historical memory. It was a general, loosely defined geographic label that alternated in Western usage with "Holy Land," "Judea," and the "Land of Israel."

The territory which was officially called "Palestine" after World War I was in 1900 an administratively indistinct part of the Ottoman empire. As such, it was divided among two Ottoman provinces, the *vilayets* of Beirut and Damascus, and an Ottoman district, the *mutesarriflik* of Jerusalem.... Hence, the loosely defined territory later designated by the name "Palestine" was not an independent country, nor did the population of

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the area see itself as a separate nation or people. Indeed, the population was ethnically, linguistically, and religiously diverse; as elsewhere in the Middle East at the time, religious loyalties were foremost. Most of the population was Sunni Muslim and loyal to the Ottoman empire, which was a Sunni Muslim state. . . .

It was not until after World War I that the international community officially designated the territory as "Palestine," at the same time that it recognized the territory as the Jewish National Home (in 1920 at San Remo).

The Arabs did not ordinarily or traditionally see the country as a separate land, . . . but as an undifferentiated part of what they called *Bilad ash-Sham*, usually translated as Greater Syria or Syria, which included not only Israel but the Syria, Jordan, and Lebanon of today.

The name Palestine, of course, comes down to the modern West from the Romans. However, the official Roman name for the country (and the usual literary name for the land as a whole in Greek and Latin usage) was at first and for a long time Judea. . . . So how did it change to Palestine? When the Romans suppressed the Bar Kokhba uprising in 135 C.E., they officially used the name Palestine (specifically Syria Palaestina) for the first time. . . . Hence, the name Palestine had a specifically anti-Jewish political purpose from the beginning of Roman usage, just as, coincidentally, it does today.

The Emperor Hadrian also ordered the expulsion of the population (who were Jews) from a large zone, including Jerusalem and its surroundings, forbidding Jews to live there. Rome then colonized the zone forbidden to Jews . . . with an "alien race," in the words of Eusebius, the early Christian historian. This may be seen as an instance of "ethnic cleansing" *avant la lettre*. . . .

Miss Decter is generally very aware of and sensitive to the issue of semantic subversion. I would suggest that she and everyone else treat the name Palestine with this in mind. And for that reason it is worthwhile to be historically pedantic.

ELLIOTT A. GREEN
Jerusalem, Israel

MIDGE DECTER writes:

I wish to thank Messrs. Weinbaum and Green for their letters. To Laurence Weinbaum I would say that even Jabotinsky's great—and, alas, fruitless—prescience about the fate of Polish Jewry could not have come near touching what in fact ultimately happened to them. Even Jabotinsky in the great depth and width of his understanding of what was going on in Europe could not have imagined it. As who could? Had he foreseen the Holocaust in its full scope, he would not have been content to urge the Jews to leave Poland; given his nature, he would probably have attempted to organize an army to kidnap them.

As for my mistake about Jabotinsky's sister's son, Johnny, reading the nearly 2,000 pages of this book was for me a process that spanned many days and nights and by the end I simply did not remember, nor had I made a note of, the single glancing reference to the marriage on page 43.

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And—though I have offered an excuse—it was inexcusable. My general complaint about Shmuel Katz's tendency to over-delicacy, however, still stands.

Elliott A. Green's brief historical essay was most interesting in itself and left me with an ever so slightly nagging speculation: what might have happened to the Jewish psyche if, during all those years when the Zionists were working and organizing and collecting money, the name of their desire had been a place officially called "Judea"? Perhaps it was for the best that this never happened, for, alas, Judea today is one of the primary places that the Powers on Earth (with help from the former government of Israel) are working night and day to prevent the Jews from possessing.

Epidermis

TO THE EDITOR:

I very much enjoyed Allegra Goodman's story, "The Art Biz" [September]. As a dermatologist, I especially appreciated the artful way Miss Goodman strewed cutaneous images through the story. She did a marvelous job of using the skin and its appendages in the metaphorical way people understand them.

The pores, for instance, stand not for little cul-de-sacs holding hair follicles and oil glands, but, rather, represent conduits between the inner milieu and the outer realm. Through them noxious badness may issue out (such as by massage), and both toxic badness or healing balm may seep in (as when soothing water passes through en route to bathe sore muscles it can only reach through the magic of metaphor).

Of course, it depends what is in the water. One of Miss Goodman's literary forebears, the 18th-century novelist and physician Tobias Smollett, had this to say in *Humphry Clinker*:

> Went to king's bath to clear strainer of skin for benefit of free perspiration. Child with scrofulous ulcers in bath. Thought makes my blood run cold. We know not what sores may be running into the water while we bathe, and what sort of matter we may thus imbibe; the king's evil, the scurvy, the cancer, and the pox, and no doubt the heat, will render the virus the more volatile and penetrating. To purify myself from all such contamination, I went to the Duke of Kingston's private bath.... After all, if the intention is no more than to wash the skin, I am convinced that simple element is more effectual than any water impregnated with salt and iron, which, being astringent, will certainly contract the pores, and leave a kind of crust upon the surface of the body. But I am now as much afraid of drinking as of bathing, for, after a long conversation with the doctor about the construction of the pump, and the cistern, it is very far from being clear to me, that the patients in the Pump-room don't swallow the scourings of the bathers. I can't help suspecting that there is, or may be, some regurgitation from the bath into the cistern of the pump. In that case, what a delicate beverage is every day quaffed by the drinkers, medicated with the sweat, and dirt, and dandruff, and the abominable discharges of various kinds, from twenty different diseased bodies, parboiling in the kettle below.

If you're not careful, you never know what can get under your skin.

Likewise, people construe sebaceous cysts as little sacs of badness, the sense I assume Miss Goodman intended by choosing this homely lesion (in her story, Henry goes to a dermatologist to have a cyst looked at, and the doctor says he will have to freeze it off). Within a fibrous capsule, cysts hold white, puslike material with a characteristic and obnoxious smell. As such, they suit Miss Goodman's metaphoric purpose quite well. Sebaceous (actually "epidermoid") cysts live under the epidermis, though. To the best of my knowledge, liquid nitrogen will not get rid of them.

It is not enough to freeze badness out. You have to cut.

AVI ROCKOFF, M.D.
Brookline, Massachusetts

ALLEGRA GOODMAN writes:

I will make sure that Henry gets that cyst removed surgically, since Avi Rockoff says that the liquid nitrogen won't do the trick. Of course, Henry finds any kind of invasive procedure absolutely horrifying. However, if this is Dr. Rockoff's medical advice I, as Henry's creator, will make sure that he follows it.

Correction

In Joseph P. Viteritti's article, "The Last Freedom" [November], three Supreme Court cases were incorrectly cited. The correct citations are: *Lemon* v. *Kurtzman*, *Pierce* v. *Society of Sisters*, and *Waltz* v. *Tax Commission*. We regret the error.—ED.

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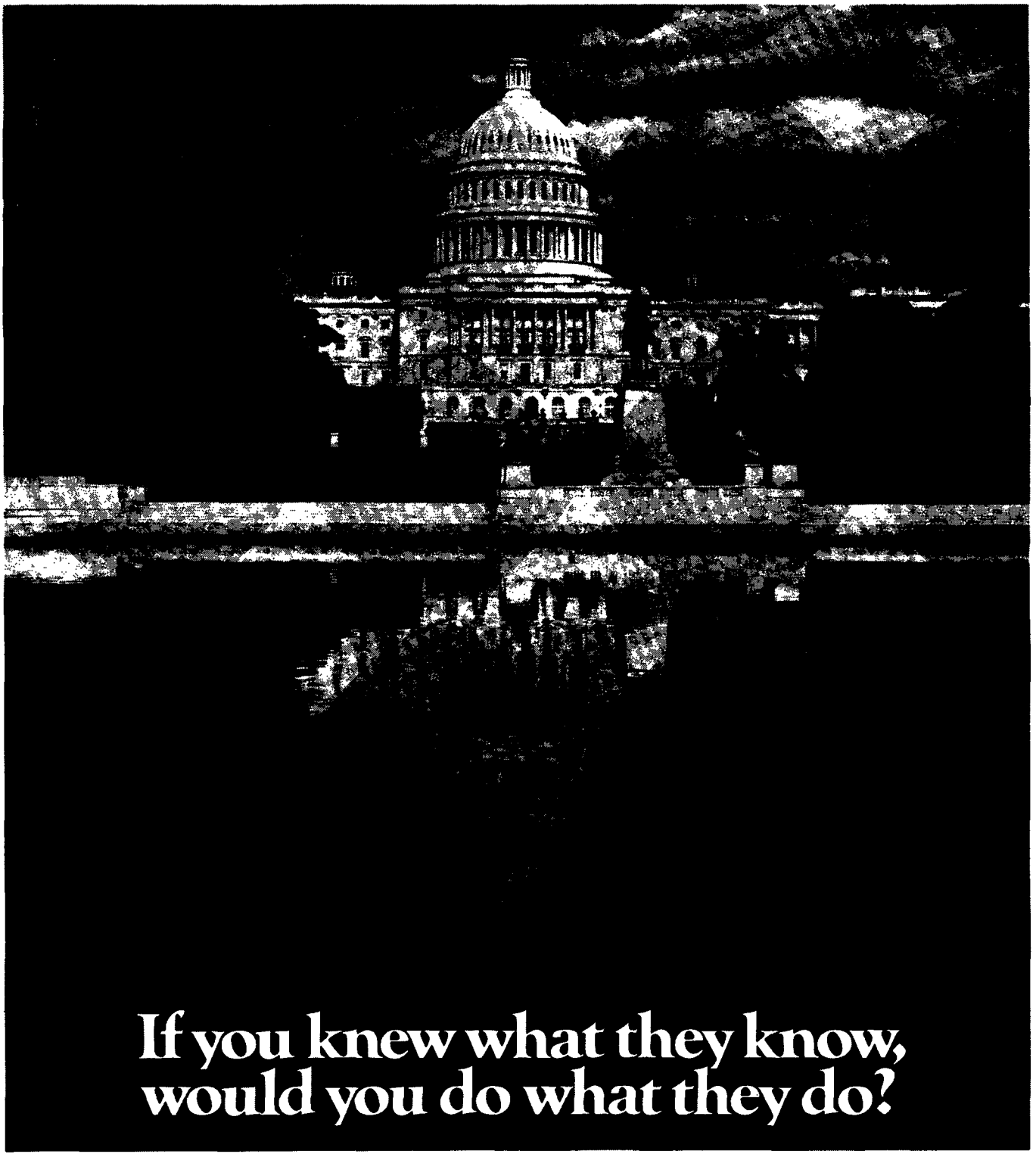

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Commentary
December 1996

Courting Death:
Assisted Suicide, Doctors, and the Law

Leon R. Kass & Nelson Lund

THAT WE die is certain. When and how we die is not. Because we want to live and not to die, we resort to medicine to delay the inevitable. Yet medicine's increasing success in prolonging life has been purchased at a heavy price, paid in the coin of *how* we die: often in conditions of unrelievable pain and suffering, irreversible incompetence, and terminal loss of control. While most people still look forward to further triumphs in medicine's war against mortality, many Americans increasingly want also to exercise greater command over the end of life. Some even wish to elect death to avoid the burdens of lingering on. Ironically, they also seek assistance in doing so from the death-defying art of medicine. People no longer talk only about refusing medical treatment. The demands of the day are for assisted suicide and euthanasia.

Nearly everyone recognizes that such practices raise profound moral and social issues: human dignity, the sanctity of life, the morality of suicide, the ethic of medicine, protection of the vulnerable, duties of care, and the government's obligation to control the use of lethal force and to protect innocent life. But because of the nature of our political system, large moral questions in America are often recast in terms of individual rights. Predictably, the complicated and delicate issues surrounding the end of life are now being addressed in the context of a demand for a "right to die." To secure such a right against existing governmental interference, protagonists have sued in the courts. And so, vexed questions of death and dying have now become a matter for constitutional adjudication.

The United States Supreme Court will soon decide whether to promulgate a new constitutional doctrine effectively ending the ability of state governments to interfere with physician-assisted suicides. If the Court takes this step, judges will henceforth become responsible for resolving some of the most delicate aspects of the relationship between physicians and their patients. There are good reasons to fear that the result would be a disaster.

The Legal Framework

LIKE MOST other states, New York and Washington have statutes making it a crime for any person to assist another to commit suicide. These statutes have been declared unconstitutional by the United States Courts of Appeals

LEON R. KASS, *a trained physician and biochemist, is the Addie Clark Harding Professor at the University of Chicago. His contributions to* COMMENTARY *include* "Death With Dignity & the Sanctity of Life" *(March 1990) and* "Suicide Made Easy" *(December 1991).* NELSON LUND *is a political scientist and professor of law at the George Mason University School of Law. A somewhat different version of the present article appears in the* Duquesne Law Review *35(1):395-425.*

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for the Second Circuit and the Ninth Circuit respectively, and those are the decisions now before the Supreme Court. There are several different legal approaches that the high Court might adopt.

It could conclude that the Constitution simply does not create any right to commit or attempt suicide, and therefore does not create any right to assist or to obtain assistance in committing suicide. Three facts powerfully support this conclusion. First, the Constitution is silent on the subject of suicide. Second, laws against assisting in a suicide were commonplace when the Constitution and its subsequent amendments were ratified. And third, there is no Supreme Court precedent recognizing such a right. These facts, indeed, have already induced Justice Antonin Scalia to announce that "the federal courts have no business in this field."

If a majority of the Justices join Scalia in reaching this conclusion, the issues discussed in this essay will not bear directly on the Court's analysis. Support for Scalia's position, however, is not certain and may not even be likely. As the Second and Ninth Circuit decisions suggest, there are several existing constitutional doctrines that might be extended so as to invalidate statutes like those in New York and Washington.

The Supreme Court might find, for example, that the statutes banning assisted suicide violate the Fourteenth Amendment provision that forbids state governments to deny any person the "equal protection of the laws." This was the approach taken by the Second Circuit, which held that New York's assisted-suicide statute discriminates irrationally between terminally ill patients on life-support systems (who can end their lives by ordering the cessation of such treatments) and terminally ill patients who do not have this option because they are not on life-support systems.

The Second Circuit acknowledged, however, that it could invalidate the classifications created by the statute only if they have no rational relationship to any legitimate state interest. When applying this rational-basis test, the Supreme Court ordinarily gives great deference to the judgment of state legislatures, and there is an abundance of legitimate reasons to justify statutes that proscribe assisted suicide. Perhaps the most obvious is the state's interest, which we will discuss in detail below, in preserving the valuable commonsense distinction that physicians make all the time between allowing nature to take its course with a gravely ill patient and stepping in to kill that patient.

A DIFFERENT LINE of argument, which was developed by the Ninth Circuit when it invalidated the Washington statute, would start not from the equal-protection clause of the Fourteenth Amendment but from its due-process clause. This provision forbids state governments to deprive any person of life, liberty, or property without due process of law. In *Roe* v. *Wade* (1973) and subsequent cases, the Supreme Court interpreted this to mean that governments are sharply constrained in their ability to interfere with women's liberty to obtain abortions. In *Planned Parenthood of Southeastern Pennsylvania* v. *Casey* (1992), the Court's most recent abortion decision, the constitutional right at stake was described at one point as "the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life."

One might conclude from this passage that a decision to commit suicide, like a decision to have an abortion, is encompassed by a judicially recognized right to make private decisions about the mystery of human life. If the Supreme Court were to draw this conclusion, then legal restrictions on suicide, and on access to at least some forms of physician assistance in committing suicide, might well be invalidated.

Although it is conceivable that the Court might take this step, it would be a tremendous and unnecessary leap. The "mystery of human life" passage in *Casey* lacks force as precedent, because it was not part of the reasoning entailed in the decision. The *Casey* Court, moreover, emphasized that its holding was itself dictated largely by the precedential force of *Roe* v. *Wade*. When the *Casey* opinions are read in their entirety, it is clear that no extension of the due-process doctrine beyond the abortion context is implied.

A much more plausible source of guidance on the assisted-suicide issue can be found in the Supreme Court's "right to die" opinion in *Cruzan* v. *Director, Missouri Department of Health* (1990). In that case, the Court rejected the relevance of the right to privacy invoked in the abortion decisions. Instead, *Cruzan* held that *if* the due-process clause protects an individual's "liberty interest" in refusing unwanted medical treatment, state governments are still free to insist that comatose patients continue to receive life-sustaining treatments unless there is clear and convincing evidence that the patient would have wished to have the treatments withdrawn. Although the Court

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did not hold that there is a constitutional right to refuse unwanted medical treatment, neither did it signal any strong reluctance to reach that conclusion in a case where the issue might be properly presented. One member of the five-Justice majority, moreover, seemed to conclude that the Constitution protects the "freedom to determine the course of [the patient's] own treatment."

As a logical matter, a right to control one's own medical treatment does not imply a right to commit suicide. Intuitively, however, it is a relatively short step from recognizing a right to refuse the drugs necessary for the maintenance of life to accepting a right to ingest the drugs that will end one's life. If the justification for requiring the government to have a good reason before it invades your body is that it is *your* body, then it seems to follow that the government should be required to offer a good reason before it forbids you to invade your own body. It thus seems fairly likely, though by no means inevitable, that the Supreme Court would find that the Constitution obliges the government to produce a good reason for interfering with a person's decision to commit suicide, at least when that decision is supported by reasons like the desire to avoid excruciating pain.

Assuming that the Court would conclude that some sort of right to suicide is protected by the Constitution, we nevertheless contend that the Court should uphold statutes prohibiting *assisted* suicide. Or, in other words, that the governmental interest in maintaining a bright-line rule against assisting with suicides is sufficient to outweigh whatever due-process "liberty interest" an individual may have in obtaining such assistance. In what follows, we do not propose to catalogue all the reasons a state might advance in defense of a statute against assisted suicide, but rather to focus on a particular set of interests that tend to be neglected or underemphasized in legal discussions. This neglect is a serious matter because the law's usual focus on individual rights, which are abstractions, makes it easy to misapprehend how decisions like the one at issue here will affect the very human individuals and institutions whose rights the courts must allocate.

Physician-Assisted Suicide and the Medical Ethic

ALTHOUGH THE New York and Washington statutes prohibit assisted suicide generally, the practical effect of the Court's decision will be almost entirely limited to the medical profession. It is conceivable, of course, that someone might want to induce another to shoot him in the back of the head, but this sort of request must be extraordinarily rare. More realistically, family members are sometimes enlisted to procure (and perhaps even administer) poisons. But this phenomenon is limited both by the relative crudity of the poisons available to the general public and by the natural reluctance of most family members to get involved directly in killing their relatives.

What is really at stake here is *physician*-assisted suicide. Doctors—and those, like nurses and pharmacists, who generally operate under their supervision—pretty much have a legal monopoly on the most desirable deadly drugs, and they control the settings in which people can be killed (or helped to kill themselves) with the least mess and disruption for everyone concerned. Furthermore, physicians are psychologically well-placed for the role because they are commonly invested with the comforting aura created by their usual therapeutic function, while they retain enough distance from the patient to avoid the special traumas that must arise when relatives are involved in helping to bring about a sick person's death. Physician participation can sanitize and even sanctify the deed.

For all these reasons, the Court should give special attention to the effects its decision will have on the medical profession.

Authorizing physician-assisted suicide would require the Court to overturn a centuries-old taboo against medical killing, a taboo understood by many to be one of the cornerstones of the medical ethic. This taboo is at least as old as, and is most famously formulated in, the Hippocratic Oath, where it stands as the first negative promise of professional self-restraint: "I will neither give a deadly drug to anybody *if asked for it*, nor will I make a suggestion to this effect. . . . In purity and holiness I will guard my life and my art." This clearly is a pledge to refrain from practicing euthanasia, even on request, and from assisting or even encouraging a willing patient in suicide.

This self-imposed professional forbearance, which was not required by the Greek laws or customs of the time, is rooted in deep insights into the nature of medicine. First, it recognizes the dangerous moral neutrality of medical technique: drugs can both cure and kill. Only if the means used serve a professionally appropriate end will medical practice be ethical. Accordingly, the Oath

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rules out assisting in suicide because the end that medical technique properly serves—the wholeness and well-working of the living human body—would be contradicted should the physician engage in delivering death-dealing drugs or advice.

Second, and most important, the taboo against euthanasia and assisted suicide—like the taboos against violating patient confidentiality and against sexual misconduct, enunciated later in the Oath—addresses a prominent "occupational hazard" to which the medical professional is especially prone: a temptation to take advantage of the vulnerability and exposure that the practice of medicine requires of patients. Just as patients necessarily divulge to the physician private and intimate details of their personal lives, and necessarily expose their naked bodies to the physician's objectifying gaze and investigating hands, so they necessarily expose and entrust the care of their very lives to the physician's skill, technique, judgment, and character. Mindful of the meaning of such exposure and vulnerability, and mindful too of their own human penchant for error and mischief, Hippocratic physicians voluntarily set limits on their own conduct, pledging not to take advantage of or to violate the patient's intimacies, naked sexuality, or life itself.

The ancient Hippocratic physicians' refusal to assist in suicide was not part of an aggressive, so-called "vitalist" approach to dying patients or an unwillingness to accept mortality. On the contrary, understanding well the limits of the medical art, they refused to intervene aggressively when the patient was deemed incurable, and they regarded it as inappropriate to prolong the natural process of dying when death was unavoidable. Insisting on the moral importance of distinguishing between letting die (often not only permissible but laudatory) and actively causing death (impermissible), they protected themselves and their patients from their own possible weaknesses and folly, thereby preserving the moral integrity ("the purity and holiness") of their art and profession.

That the Oath and its ethical vision of medicine is the product of classical Greek antiquity reminds us that the ban on physician-assisted suicide was not and is not the result of religious impulses alone. The Oath is fundamentally pagan and medical, and it has no connection with biblical religion or the Judeo-Christian doctrines of the sanctity of human life. Nor is the Oath merely a parochial product of ancient Greek culture. Notwithstanding the fact that it begins by invoking Apollo and other deities no longer worshiped, it reflects and articulates a coherent, rational, and indeed wise, vision of the art of medicine. That is why it has been widely accepted in the West as a document for all times and places.

THE HIPPOCRATIC Oath also proscribes physician participation in abortions. Before *Roe* v. *Wade*, this taboo governed American medical practice, but it has since fallen away. For this reason, some commentators dismiss the Hippocratic Oath as passé, and regard its proscription of assisting suicide as irrelevant to our morally more pluralistic times. The Ninth Circuit, for example, asserted that after *Roe*, "doctors began performing abortions routinely and the ethical integrity of the medical profession remained undiminished." But the court cited no evidence to support this cheery conclusion, and there are, in fact, grounds to argue the contrary. Massive numbers of abortions are now being performed, far beyond what was originally expected, and for reasons not originally regarded as appropriate. Moreover, physician acceptance of abortion may be partly responsible for recent weakenings in the profession's aversion to causing death, seen in those physicians who are today willing to practice euthanasia, a majority of whom have entered the profession since *Roe*. Indeed, one of the arguments offered 25 years ago against allowing doctors to perform abortions was that it would inevitably lead to doctors performing euthanasia. More than halfway down that slippery slope, it should be considered an open question, to say the least, whether the ethical integrity of the medical profession has "remained undiminished."

Be that as it may, the taboo against medical killing and death-dealing is not tied solely to the venerable but now partly compromised Hippocratic Oath. The proscription has been reaffirmed in numerous professional codes and statements of principle. The American Medical Association's code of Medical Ethics, for example, very explicitly rules out physician-assisted suicide, on the grounds that it is "fundamentally incompatible with the physician's role as healer, would be difficult or impossible to control, and would pose serious societal risks." The AMA's policy statements have repeatedly reiterated this position, most recently in a response this past June to the decisions of the Second and Ninth Circuits.

Some now choose to characterize these teachings as merely the residue of tradition, and to ar-

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gue that times have changed. The received wisdom of the medical profession, never mind Hippocrates, is not wisdom for today, they contend. Today, patients die differently, the vast majority in institutions, and most deaths are connected with some decision about withholding or withdrawing technological intervention. Our population is now aged and suffers increasingly from chronic and degenerative diseases and dementias. The cost of medical care is extremely high, especially for persons in the last year of life. Many people fear an overmedicalized death and a protracted process of dying, made possible by new technological devices such as respirators, defibrillators, dialyzers, and devices for artificial feeding.

Suicide was decriminalized long ago, and we have recognized the importance of patient autonomy in medical decision-making, especially at the end of life. We have established clear legal rights to refuse and to discontinue medical intervention, even should death be a likely outcome. Living wills and advance directives to protect our wishes should we fall incompetent have legal force in nearly every state. But although the hospice movement and advances in pain control already make physically comfortable dying possible for most people, some still want the right to have medical assistance in committing suicide and also direct killing by physicians. Public-opinion polls, though they should be viewed with caution, appear to indicate support for such a right. Moreover, many doctors are apparently willing not only to accede to requests for deadly drugs, but also to administer them to patients unable to take them for themselves. Some physicians, it is alleged, are already doing so in secret.

In short, so the argument goes, the ancient taboo against physician-assisted suicide and euthanasia is now an obstacle to a humane death. What would be lost if the taboo fell?

THE ANSWER is that a great deal would be lost. Simple reflection, backed by empirical evidence, makes plain some obvious, probable, and serious consequences for the welfare of patients and for medical practice itself.

Once it becomes possible to think of death as a "therapeutic option" in the physician's armamentarium, we shall almost certainly see a great increase in suicide and physician-assisted death, far beyond the few and limited kinds of cases now invoked to justify a change in the law. Incentives will be altered, not only for patients given a new freedom to elect death but also for physicians, families, hospitals, health-maintenance organizations (HMO's), and insurers.

It is especially important to focus on these incentives, which operate almost invisibly and are therefore easy to forget, especially when we are preoccupied with the extreme cases—the ones always brought forth to gain sympathy for overturning the prohibition against assisted suicide. But these few patients caught up in genuinely heartrending medical situations will become hard to separate, both logically and practically, from countless other potential "candidates" for assisted death whose treatment will surely be affected by altered incentives. There may be no area of jurisprudence in which it is more ominously true that heartrending cases make bad law.

Many families and physicians will find in the option of electable death an opportunity to relieve themselves of the emotional burdens of caring for difficult or incurable patients. Others will be able to avoid huge economic costs or to achieve financial gain connected to an earlier demise, especially where an inheritance will be jeopardized by the expense of caring for long-lingering illness. Even when relatives and physicians are not consciously aware that they are succumbing to such temptations, they will subtly but surely be pulled in that direction.

Because the quick-fix of suicide is easy and cheap, it will in many cases replace the use of hospice and other humanly-engaged forms of palliative care, for there will be much less economic incentive to continue building and supporting social and institutional arrangements for giving humane care to the dying. Lack of medical insurance already keeps many people from adequate end-of-life care. Indeed, cost-cutting pressures already exerted on physicians by insurers and hospitals now produce sub-optimum care even for many who have coverage. In our new medico-economic climate, with for-profit hospital corporations and HMO's, the removal of the ban against physician-assisted suicide becomes even more dangerous: a quick death will often be the most cost-effective "therapeutic option" and will, therefore, be ever more frequently employed, especially should our society move, as seems likely, toward some form of explicit rationing of medical care at the end of life.

Proponents of assisted suicide will counter these concerns by reminding us that it is the patient alone who will be legally entitled to initiate the request for lethal medication. They will point out that concern for the economic well-being of

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one's heirs is not a contemptible incentive for electing an earlier death, and that it is not irrational to try to keep money saved for a grandchild's education from being squandered on a miserable six months more of life. But such arguments, though well-taken in theory, naively idealize the usual situation of severely ill patients.

The ideal of rational autonomy, so beloved of legal theorists, rarely obtains in actual medical practice. Illness nearly invariably means dependence, and dependence means relying for advice on physician and family. This is especially true with the seriously or terminally ill, where there is frequently also depression or diminished mental capacity that clouds one's judgment or weakens one's resolve. With patients thus reduced—helpless in action and ambivalent about life—someone who will benefit from their death need not proceed by overt coercion. Rather, requests for assisted suicide can and will be subtly engineered.

To alter and influence choices, physicians and families need not be driven entirely by base motives or even be consciously manipulative. Well-meaning and discreet suggestions, or even unconscious changes in expression, gesture, and tone of voice, can move a dependent and suggestible patient toward a choice for death. Simply by making assisted suicide an option available to gravely ill persons, will we not, as Yale Kamisar wrote long ago,

> sweep up, in the process, some who are not really tired of life, but think others are tired of them; some who do not really want to die, but who feel that they should not live on, because to do so when there looms the legal alternative of euthanasia is to do a selfish or cowardly act?

Anyone who knows anything at all about the real life of the elderly and the incurable knows that many of them will experience—and be helped to experience—their *right* to choose physician-assisted death as a *duty* to do so.

IN THE vast majority of medical situations, the idealistic assumptions of doctor-patient equality and of patient autonomy are in fact false. This is so even when the patient is in relatively good health and where there is an intimate doctor-patient relationship of long standing. But with the seriously ill, the hospitalized, and, even more, with the vast majority of patients who are treated by physicians who know them little or not at all, many choices for death by the so-called autonomous patient will not be truly free and fully informed.

Physicians hold a monopoly on the necessary information: prognosis, alternative treatments, and their costs and burdens. Like many technical experts, they are masters at framing the options to guarantee a particular outcome. This they do already in presenting therapeutic options to the "autonomous patient" for his decision, and there is no reason to think that will change should one of those options now become "assistance for death." When the physician presents a depressed or frightened patient with a horrible prognosis and includes among the options the offer of a "gentle quick release," what will the patient likely choose, especially in the face of a spiraling hospital bill or edgy children? The legalization of physician-assisted suicide, ostensibly a measure enhancing the freedom of dying patients, will thus in many cases become a deadly license for physicians to recommend and prescribe death, free from outside scrutiny and immune from possible prosecution.

Partly for this reason, the practice of physician-assisted suicide is likely soon to erode the trust that patients give to physicians. True, some may be relieved to know that their old family doctor will now be able to provide suicide-assistance when asked. But many—especially those who are not socially strong or who lack a close relationship with a trusted personal doctor—will be rightly suspicious. For how can you trust a stranger-doctor to be wholeheartedly devoted to your best interests once he has a license to kill? Imagine the scene: you are old, poor, in failing health, and alone in the world; you are brought to the city hospital after a fall with fractured ribs and pneumonia. The nurse or intern enters late at night with a syringe full of yellow stuff for your intravenous drip. Never mind that, for now, death can be *legally* prescribed only on request. How soundly will you sleep?

Trust will suffer profoundly in more subtle ways as well. Should physician-assisted suicide become a legal option, it will enter unavoidably—sometimes explicitly, sometimes tacitly—into many a doctor-patient encounter. Though there may be attempts to prevent physicians from introducing the subject, once the option exists as a legal right there will be even stronger pressures to make sure that patients know they have it.* In-

* Analogous pressures now operate in the matter of abortion. Even obstetricians opposed to abortion are often compelled to discuss it, if only to avoid later lawsuits should the child be born with abnormalities.

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eluctably, patients will now be forced to wonder about their doctor, regardless of how he handles the situation: did he introduce the subject because he secretly or unconsciously wishes to abandon me, or, worse, because he wishes I were dead? Does he avoid the subject for the same reason, fearing to let me suspect the truth, or conversely, is it because he wants me to suffer?

Few will openly express such fears and doubts. Because patients must rely on their doctor, they do not want to risk alienating him by seeming to distrust his motives and good will. Anyone who understands even a little of the subtle psychodynamics of the doctor-patient relationship can see immediately the corrosive effects of doubt and suspicion that will be caused by explicit (or avoided) speech about physician-assisted death.

Nor is trust just a moral nicety, humanly desirable but medically dispensable. On the contrary, a patient's trust in the physician is a necessary ingredient in the therapeutic relationship and, at least indirectly, in the healing process itself. Mistrust produces stress, anger, and resistance to treatment. In the increasingly impersonal world of modern medicine, patients must, without any direct evidence, presume that their caregivers are trustworthy even before they have shown they deserve to be trusted. Especially under these conditions, the trust given to each physician stems largely from the trustworthiness attached to the profession as a whole. With the taboo against physician-assisted suicide broken, legitimate fears of deadly abuse of the new license will attach even to the most honorable physicians, whose ability to heal and comfort will therefore often be compromised.

BUT TRUST between patient and doctor is hardly the only good that will be harmed. Once physician-assisted suicide becomes acceptable, the practice will almost certainly be expanded beyond the narrow range now envisioned. Physicians will inevitably come to "assist" the non-terminally ill and the less-than-fully competent, and to engage in active euthanasia, both voluntary and nonvoluntary. None of the boundaries among these closely related practices is clearly definable or practicably defensible against expansion and erosion.

Terminal illness is notoriously difficult to define precisely and almost as difficult to predict accurately. For example, the frequently used estimate of "less than six months to live" leaves unanswered whether it means six months *with* or six months *without* specific forms of treatment. Besides, a newly-discovered constitutional right to determine the time and manner of one's death would, if limited to the terminally ill, seem to discriminate unfairly against those fated to suffer their illnesses for longer periods of time. Patients with early Alzheimer's disease or so-called Lou Gehrig's disease (amyotrophic lateral sclerosis) are not considered terminally ill, yet they are frequently mentioned as leading candidates for assistance in dying. Few of Jack Kevorkian's "patients" have been, by anyone's definition, terminally ill.

Autonomy, choice, and "liberty interests" are no respecters of arbitrary limitations on their exercise. If suicide and its assistance are legally justified by the principle of autonomy and choice, then the whole matter is too personal, intimate, and subjective to be governed by *any* objective or demonstrable criteria, such as certifiable terminal illness or truly intractable pain. For who is to say what makes suffering or life "unbearable" or death "electable" for another person? The autonomy argument favored by so many legal theorists sooner or later will undermine all criteria proposed for evaluating a patient's choice. Further, if the courts refuse to see a meaningful distinction between withholding or withdrawing treatment and giving deadly drugs, it will be impossible legally to deny non-terminally-ill patients a right to the latter when they already clearly have a right to the former.

For similar reasons, it will be impossible to confine the new right to those who will themselves administer the deadly drug the doctor has prescribed. What if the patient's infirmity prevents him from putting the pills into his mouth or from swallowing them? What if he vomits them up or if, for some other reason, the usually "lethal dose" does not produce death in his case? The physician will surely not stand idly by; now committed to the patient's death, he will certainly lend a hand. And should he be disinclined to do so, courts, citing equal-protection arguments like those advanced by the Second Circuit, will compel him: why should someone be denied equal access to suicide assistance just because he is quadriplegic and cannot administer the chosen drug to himself? By this obvious route, physician-assisted suicide will lead quickly and inevitably to voluntary euthanasia performed by physicians.

The courts are also naive if they believe that one can draw and hold a line between, on the one

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hand, physician-assisted suicide or voluntary active euthanasia (practiced by doctors on willing patients) and, on the other hand, *non*voluntary euthanasia (where physicians perform mercy-killing without the patient's request). Legal theories that rely on the supremacy of autonomous choice offer purely theoretical reassurance, unwarranted by what will happen in practice. Almost no physician will accede to a request for deadly drugs unless he believes there are good reasons to justify the patient's choice for death (too much pain, loss of dignity, lack of self-command, poor quality of life); otherwise, he will try to persuade the patient to accept some other course of treatment or palliation, including psychotherapy for his suicidal wishes. Physician-assisted suicide *in practice* will be performed by physicians not out of simple deference to patient choice but for reasons of mercy: this is a "useless" or "degrading" or "dehumanized" life that pleads for active, merciful termination, and therefore deserves my medical assistance.

But once suicide and assisting suicide are deemed all right for reasons of "mercy," then delivering the dehumanized will also be all right, whether such deliverance is chosen or not. Once legalized, physician-assisted suicide will not remain confined to those who freely and knowingly elect it—nor do the most energetic backers of euthanasia (including some members of the medical profession) really want it thus restricted. They see the slippery slope and eagerly embrace the principle that will justify the entire downward slide. Why? Because the vast majority of candidates who "merit" an earlier death cannot request it for themselves. Persons in a so-called persistent vegetative state; those suffering from severe depression, senility, mental illness, or Alzheimer's disease; infants who are deformed; and retarded or dying children—all are incapable of requesting death, but are equally deserving of the new humane "aid-in-dying."

Lawyers and doctors, subtly encouraged by cost-containers, will soon rectify this inequality. Invoking the rhetoric of equal protection, they will ask why the comatose or the demented should be denied a right just because they cannot claim it for themselves. With court-appointed proxy consenters, we will quickly erase the distinction between the right to choose one's own death and the right to request someone else's—as we have already done in termination-of-treatment cases.

Doctors and relatives will not even need to wait for such changes in the law. Who will be around to notice when the elderly, poor, crippled, weak, powerless, retarded, depressed, uneducated, demented, or gullible are mercifully released from the lives their doctors, nurses, and next of kin deem no longer worth living?

THAT THE specter of unauthorized euthanasia is no mere scare-mongering is confirmed by reports from Holland. Although assisted suicide and voluntary euthanasia by physicians are technically still against the law there, their practice has been tolerated, even encouraged, for nearly twenty years, under guidelines established by the medical profession. And although the guidelines insist that choosing death must be informed and voluntary, a 1989 survey of 300 physicians disclosed that over 40 percent had performed *non*voluntary euthanasia and over 10 percent had done so five times or more. Another survey, this one commissioned by the Dutch government, provides even more alarming data: in 1990, besides the 2,300 cases of voluntary euthanasia and 400 cases of physician-assisted suicide per year, there were over 1,000 cases of active *non*voluntary euthanasia performed without the patient's knowledge or consent, *including roughly 140 cases (14 percent) in which the patients were mentally totally competent.* (Comparable rates of nonvoluntary euthanasia for the United States would be roughly 20,000 cases per year.) In addition, there were 8,100 cases of morphine overdose with the intent to terminate life, of which 68 percent (5,508 cases) took place without patient knowledge or consent.

And why are Dutch physicians performing nonvoluntary euthanasia? "Low quality of life," "relatives' inability to cope," and "no prospect of improvement" were reasons physicians gave for killing patients without request; pain or suffering was mentioned by only 30 percent. Is there any reason to believe that Dutch physicians are less committed than their American counterparts to the equal dignity of every life under their care?

Even proponents of physician-assisted suicide concede that there are dangers of abuse. But they believe, as did both the Second and Ninth Circuits, that physicians and state governments can establish guidelines and regulations that will prevent such abuses and curtail undesirable extensions of the practice. This confidence in regulation, however, is no more than a pious hope, and one that flies in the face of both existing evidence and common sense.

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The guidelines that have been proposed are, in fact, defective and ineffective, and the evidence from Holland already shows that they are not being followed. There, comprehensive regulations that include requirements of voluntariness, thoughtfully considered and persistent requests, unacceptable suffering, consultation with a second physician, and accurate reporting of the cause of death are all being neglected. There are many known cases of nonvoluntary euthanasia, and many more that go unreported. In the majority of such cases, Dutch physicians illegally certify that death was due to natural causes. Moreover, the Dutch courts have been willing to set aside the established criteria and regulations in the name of mercy and an alleged medical duty to relieve suffering that is said to outweigh the duty not to kill.

The problem is not peculiar to the Dutch regulations or to Dutch social prejudices and legal arrangements. As Daniel Callahan and Margot White have shown in compelling detail, *any* guidelines and regulations that have been or *could be* proposed are likely to be equally defective and ineffective. Indeed, the practice of assisted suicide, insofar as it will occur in the privacy of the doctor-patient relationship, is *in principle* unregulable. In the words of Callahan and White, "maintaining the privacy of the physician-patient relationship and the confidentiality of these deliberations is fundamentally incompatible with meaningful oversight and adherence to any statutory regulations." Legalization of physician-assisted suicide will thus lead not to regulation of the practice, but to deregulation of the physicians, who will now have more power than ever over the life and death of their patients.

The citizens of Oregon, by a narrow margin, have recently expressed the wish to experiment with assisted suicide, using what they believe—foolishly, in our view—are adequate safeguards. Many other states have recently rejected proposals for such experiments. Should the people of Oregon come to believe that they made a mistake, they can reverse course. But if the Supreme Court makes a similar mistake, correcting it will be a slow, uncertain, and almost surely incomplete process. This is another reason to be very wary of establishing a constitutional right to a dangerous practice on the basis of an ill-considered confidence that proper safeguards can be found to reduce the dangers, especially when there are powerful reasons to believe that such safeguards will be difficult, if not impossible, to provide.

Professional Ethics and the Law

WE TURN now to another and possibly even more delicate subject. Precisely because of the ineffectiveness and unenforceability of any guidelines regulating physician-assisted suicide, prevention of misuse, abuse, and unauthorized extension of the practice will rest almost entirely on the precarious virtue of the medical profession and its individual practitioners. Yet legalization will surely undermine the very ethical integrity of the medical profession on which any supposedly proper practice of helping-to-die depends. What is too little appreciated in almost all these discussions is the fragility of medical professionalism, and hence the need for legal reinforcement of the profession's norms.

Medicine *is* a profession, not merely a trade. This means that its practice is an ethical activity, and an extremely demanding one. Physicians are ethically obliged always to put their patients' interests ahead of their own. They are ethically obliged to ensure that their enormous powers over life and death, powers tied to increasingly esoteric knowledge and increasingly potent technologies, are not misused or abused. They are ethically obliged to recognize the limits of their craft, given that all their patients will necessarily decay and die sooner or later, medicine or no medicine. They are ethically obliged always to care for, never to abandon, their patients, and this remains true even when a cure is impossible, and even—indeed, especially—when death is near.

The moral disposition to fulfill these obligations cannot be produced by market forces alone or by the ordinary legal prohibitions against force and fraud. Rather, the formation of a moral physician is the work of a partly explicit and partly tacit set of attitudes, sentiments, dispositions, principles, and beliefs devised over centuries and tested by experience, and inculcated both formally and informally during the lengthy socialization of new physicians into the profession.

Among its major purposes, medical ethics seeks to protect physicians against both their strengths and their weaknesses. To protect against the danger of professional arrogance, physicians are taught about the need for humility concerning the limits of their own specialized competencies and their ability to offer precise prognoses or to effect permanent cures. They are warned against prideful overconfidence and the belief that they always know better what is in the patient's best interest. They are taught to seek outside consul-

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tation, to be modest in their predictions and promises, to secure informed consent for all procedures, and to respect their patients' prerogatives in refusing treatment or hospitalization. They gradually, and no doubt imperfectly, learn how limited is their ability to preserve health, prolong life, and forestall death.

Perhaps even more important are those aspects of medical ethics that protect the physician against his ordinary human weaknesses: his tendency to allow his own self-interest (regarding time, money, or competing concerns) to undermine his devotion to his patients' needs; his own distastes, dislikes, and frustrations regarding difficult or incurable patients, any of which might lead him to shortchange their care, to become indifferent to their needs and complaints, or even to neglect and abandon them outright; his own fear of death, which might prevent him from allowing his patients to die without added indignities. All these lessons are very difficult to learn and faithfully practice, for taking care of the sick and, especially, the dying places extraordinary and unrelenting demands on one's patience, equanimity, and strength of character.

DESPITE THE medical ideal, and despite all exhortations to the contrary, physicians do in fact get tired of treating patients who are hard to cure, who resist their best efforts, who are on their way down—especially when they have had no long-term relationship with them over many years. "Gorks," "gomers," and "vegetables" are only some of the less-than-affectionate names such patients receive from interns and residents. Once the venerable taboo against assisted suicide and medical killing is broken, many physicians will be much less able to care wholeheartedly for these patients.

With death now a legitimate "therapeutic option," the exhausted medical resident will be tempted to find it the best treatment for the little old lady "dumped" again on the emergency room by the nearby nursing home. Should she get the necessary penicillin and respirator one more time, or, perhaps, this time just an overdose of morphine? Even if the morphine is not given, the thinkability of doing so, and the likely impossibility of discovery and prosecution, will greatly alter the physician's attitude toward his patients. Today, hospital patients whose charts contain "Do Not Resuscitate" orders are very often treated differently from the rest. This happens not because of official policy, but despite it. A subtle message is silently conveyed that such patients are less worthy of continued life. Should lethal drugs become a legal option, such psychological changes in physicians will be even more difficult to resist. And the consequences will often be deadly.

Even the most humane and conscientious physician psychologically needs protection against himself and his weaknesses if he is to care fully for those who entrust themselves to him. One physician who has worked for many years in a hospice caring for dying patients put the matter most convincingly: "Only because I knew that I could not and would not kill my patients was I able to enter most fully and intimately into caring for them as they lay dying."

The taboo against physician-assisted suicide is perhaps even more crucial as a protection against physicians' arrogance—their willingness to judge, on the basis of *their own private prejudices and attitudes*, whether this or that life is unworthy of continued existence. This most important point is generally overlooked in discussions of assisted suicide because so much attention is focused on the patient's voluntary request for death. But in order to comply with such a request, the physician must, willy-nilly, play the part of judge, and his judgments will be decidedly nonmedical and nonprofessional, based on his own personal standards. One will choose to assist death over against moderate or impending senility, another against paraplegia, a third against severe pain or blindness or prolonged depression. Only those requests resonating with the physician's own criteria of "intolerable" or "unworthy" lives will be honored.

THE PROBLEM is not primarily that physicians believe some lives more worthy or better lived than others; nearly all people hold such opinions and make such judgments. The danger comes when they *act* on these judgments, and especially when they do so under the cloak of professional prestige and compassion. Medical ethics, mindful that medicine wields formidable powers over life and death, has for centuries prevented physicians from acting professionally on the basis of any such personal judgment. Medical students, interns, and residents are taught—and acquire—a profound repugnance to medical killing, as a major defense against committing, or even contemplating, the worst action to which their arrogance and/or their weaknesses might lead them.

At the same time, it is true, they are also taught not always to oppose death. Because it is part of

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life, physicians must not hate death as they abhor killing. They are taught—and it is a lesson not easily learned—when they should abandon interventions, cease interfering with the dying process, and give only care, comfort, and company to the dying patient. But in order to be able to keep their balance, physicians have insisted on the absolute distinction between letting die and deliberate killing. Nonmedical laymen (including lawyers and judges) may not be impressed with this distinction, but for practicing physicians it is morally crucial.

For one thing, death does not necessarily follow the discontinuance of treatment. Karen Ann Quinlan lived more than ten years after the courts allowed the "life-sustaining" respirator to be removed; not her physician but her underlying fatal illness became the true cause of her death. The result in the Quinlan case shows that the right to discontinue treatment cannot be part of some larger right, in the words of the Ninth Circuit, to "determine the time and manner of one's own death." Indeed, it is both naive and thoughtless to believe that we can exercise such a "right" short of killing ourselves or arranging to be killed on schedule. The whole notion of the so-called right to die exposes the shallowness of our exaggerated belief in mastery over nature and fortune, a belief that informs the Ninth Circuit's opinion and, indeed, our entire technological approach to death.

What is most important *morally* is that the physician who ceases treatment does not intend the death of the patient. Even if death follows as a result of his action or omission, his intention is to avoid useless and degrading medical additions to the already sad end of a life. By contrast, in assisted suicide and all other forms of direct killing, the physician must necessarily and indubitably intend primarily that the patient be made dead. And he must knowingly and indubitably cast himself in the role of the agent of death. This remains true even if he is merely an assistant in suicide. Morally, a physician who provides the pills or lets the patient plunge the syringe after he leaves the room is no different from one who does the deed himself. As the Hippocratic Oath puts it, "I will neither give a deadly drug to anybody if asked for it, nor will I make a suggestion to this effect."

THE SAME prohibition of physician killing continues to operate in other areas of palliative care where some have sought to deny its importance. For example, physicians often and quite properly prescribe high doses of narcotics to patients with widespread cancer in an effort to relieve severe pain, even though such medication carries an increased risk of death. But it is wrong to say that the current use of intravenous morphine in advanced cancer patients already constitutes a practice of medical killing. The physician here intends only the relief of suffering, which presupposes that the patient will continue to live in order to be relieved. Death, should it occur, is unintended and regretted.

The well-established rule of medical ethics that governs this practice is known as the principle of double effect, a principle misunderstood by the Ninth Circuit. It is morally licit to embrace a course of action that intends and serves a worthy goal (like relieving suffering), employing means that may have, as an unintended and undesired consequence, some harm or evil for the patient. Such cases are distinguished from the morally illicit efforts, like those of Jack Kevorkian, that indirectly "relieve suffering" by deliberately providing a lethal dose of a drug and thus eliminating the sufferer.

True, it may not always be easy to distinguish the two cases from the outside. When death occurs from respiratory depression following morphine administration, the outcome—a dead patient—is the same, and the proximate cause—morphine—may also be the same. Physical evidence alone, obtained after the fact, will often not be enough to tell us whether the physician acted with intent to ease pain or with intent to kill. But that is *exactly* why the principle of double effect is so important. Only an ethic opposing the intent to kill, which is reinforced by current laws, keeps the physician from such deliberate deadly acts.

Both as a matter of law and as a matter of medical ethics, the right to refuse unwanted medical intervention is properly seen not as part of a right to become dead but rather (like the rest of the doctrine of informed consent) as part of a right protecting how we choose to *live*, even while we are dying. What become unwanted treatments are first begun on the basis of a prudent judgment, weighing benefits and burdens and, in the event of doubt, usually erring on the side of life and hope for recovery. But after a proper trial, when recovery seems beyond reasonable possibility, and when the patient's condition deteriorates, one is medically and morally free to abandon the therapeutic efforts, even if death results. Yet it is not

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the intent of this discontinuance—whether by a physical act of omission or commission—that the patient become dead.*

It is therefore false to say (as the Second Circuit does) that physicians who turn off a respirator are already practicing assisted suicide, or (as the Ninth Circuit says) that physicians who today run increased risks of their patients' death in order to provide adequate pain medication are knowingly and intentionally killing them. No doubt, some physicians, already far down the slippery slope to involuntary euthanasia, may be abusing the principle of double effect, but such abuse in no way justifies blurring the only line that can be drawn clearly in this difficult area.

Law cannot substitute for medical ethics. It cannot teach or inculcate the right attitudes and standards that professionals need if they are to preserve the fragile moral integrity on which the proper practice of medicine depends. But the law can support that ethic by enacting and upholding a bright-line rule that coincides with the necessary prohibition against doctors becoming agents of death. Especially where there is grave doubt that adequate substitutes can be found for such a rule, or that there can be enforceable guidelines and safeguards for medical practice in its absence, the state has a powerful interest in preventing the healing profession from becoming also the death-dealing profession.

That many physicians are already tempted to assist in suicide, and to perform euthanasia, is *not* a reason for changing the traditional rule. On the contrary, it may very well be a warning of how weakened the fragile medical ethic has already become, and how important it is to help shore it up. Where our state governments have decided to uphold this ethic by proscribing assisted suicide, and where the authoritative voices of the medical profession urge them to continue to do so, federal courts should not be in the business of undermining their efforts.

Conclusion

IT MAY seem paradoxical that we have been defending a law on the ground that it helps the people whose conduct it restricts to practice self-regulation. But this is exactly where law is often most important and useful. Under the growing economic, legal, and technologically-driven pressures that trouble modern American medicine, it is increasingly difficult for the medical profession to uphold its own ethical standards and for individual physicians to keep their moral balance. Regarding no matter is it more important to maintain professional ethics than in the delicate and dangerous area of care for the dying. Regarding no matter is there greater danger to patients, physicians, and the whole fabric of their relationship.

State governments, recognizing the importance of medicine's moral standards in general and of the ancient taboo against medical killing in particular, have reasonably and rightfully elected to support the profession with laws banning all physician-assisted suicide. Far from being paradoxical, that is the course of wisdom.

YET THE question is not, finally, a question for the courts. It is a question for our entire society. Even if the Supreme Court decides, as we think it should, to uphold the laws of New York and Washington, the battle regarding assisted suicide and euthanasia will continue. The arena will then shift back to the states, with "right-to-die" groups and their allies seeking to change existing state law so as to legalize assisted suicide and euthanasia on request. Whether our society will be able to hold the line is greatly in doubt.

Much will depend on whether the medical profession can alleviate public fears by demonstrating, after decades of inadequate attention, that it is now both willing and able to provide adequate comfort and care for dying patients. Much will depend on whether we as a society are able to muster the will and the resources to provide dignified palliative treatment for those in need. Much will depend on whether we can see past our preoccupation with asserting new individual rights to grasp the profound danger to the social order of allowing medical killing. But, in the end, everything may depend on whether the American

* This distinction holds up perfectly well in the vexed case of artificial feeding tubes, often cited by some in order to blur it. They argue, mistakenly, that the removal of these tubes constitutes an act of assisted suicide or euthanasia because it amounts to killing by starvation. But the decision to insert a feeding tube in the first place is often not obligatory, and subsequent decisions about removing it are similarly a matter of both medical and moral judgment. It is reasonable to insert a feeding tube when there is some hope that the patient will improve. But if improvement does not occur after an appropriate trial, artificial feeding can become not only a useless exercise but even a burdensome and unwelcome interference in the process of dying. Removing the tube at that point does not entail a decision to "starve the patient to death." Only those who mistakenly assume that medicine's goal is the indefinite prolongation of life can fail to see that there always comes a time when the right course of action is to avoid causing further harm and indignity. To yield before the inevitable is not the same as endorsing or choosing it.

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public can learn to accept the limits of medical power and acquire an appropriate attitude toward mortality.

Because we have adopted a largely technical approach to medicine, and have medicalized so much of the end of life, we are now confined to contemplating only a final technical solution for the fact of human finitude and for the degradations that are the unintended consequences of our technical success. This is dangerous folly. Friends of autonomy and human dignity should rather be trying to reverse the dehumanization of the last stages of life, instead of giving dehumanization its final triumph by welcoming the desperate good-bye-to-all-that contained in one final plea for poison.

The present crisis that leads to the demand for a "right to die" is thus an opportunity to recover an appreciation of living with and against mortality, and to affirm the residual humanity that can be appreciated and cared for even in the face of incurable and terminal illness. Should we cave in, should we choose to become technical dispensers of death, we will not only be abandoning our loved ones and our duty to care for them; we will also exacerbate the worst tendencies of modern life, embracing technicism and so-called humaneness where humanity and encouragement are both required and sorely lacking.

Only by holding fast, by declining "the ethics of choice" and its deadly options, by learning that finitude is no disgrace and that our humanity can be cared for to the very end, may we yet be able to stem the rising tide that threatens permanently to submerge our best hopes for human dignity.

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The Tragic Predicament of Benjamin Netanyahu

Norman Podhoretz

On the face of it, I had every reason to rejoice wholeheartedly when Benjamin Netanyahu, the leader of the Likud party, was elected Prime Minister of Israel last May. Not only was he an old friend, but I also agreed entirely with the criticisms he had made of the policies toward the Palestinians and the Syrians being pursued by the Labor government under his opponent, Shimon Peres. Why, then, did I greet the news of his victory over Peres with decidedly mixed feelings?

To answer that question, I have to go back to the beginning—and in this context the beginning was the early months of 1993 when word first leaked out that Yitzhak Rabin, then the Prime Minister, and Shimon Peres, then his Foreign Minister, were secretly preparing to recognize the PLO and accept its leader, Yasir Arafat, as a negotiating partner. To me—and indeed to anyone with eyes to see—this could only mean that the two Labor leaders were embarking on a journey whose inevitable outcome would be a Palestinian state with its capital in East Jerusalem. Moreover, on another "track," they were fixing to return the Golan Heights to Syria provided that its president, Hafez al-Assad, would sign a piece of paper prescribing a normalization of relations with Israel.

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Collectively, the gradual implementation of these policies later came to be known as the "peace process," or, where the Palestinian track in particular was concerned, "Oslo," after the city in which the first agreement between Israel and the PLO was negotiated and then concluded in 1993.

Yet no sooner had this process been set in motion than the Rabin government began denying, sometimes heatedly, that the goals toward which Israel was now moving were what they were, and it went on doing so even after the first Oslo accord had been signed on the White House lawn. As each new stage in the process was reached, Rabin himself would declare, *thus far and no farther*—and then he would go on to cross the latest red line he had only just drawn.

Perhaps Rabin meant it when he made such promises but then found himself dragged along by a momentum he was unable to control; or perhaps he thought it the better part of political prudence to be less than candid with a public that he feared would refuse to support a course which he himself and all the leaders of the Labor party (not to mention the more hawkish Likud opposition) had in the past repeatedly insisted would place Israel in mortal danger. My own impression is that he was at first hesitant and skeptical, but only at first. By the end, having staked everything—his political career, his place in Jewish history, and even, as it would horribly turn out, his life—on the "peace

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process," and having by then reached a point of no return, he had lost his initial ambivalence and became almost as enthusiastic about the whole business as Peres had always been.

Be that as it may, Peres too persisted in concealing the goals toward which the "peace process" was aimed when he became Prime Minister in 1995 after the assassination of Rabin. To this day, indeed, he has still never openly come out for a Palestinian state, in spite of the fact that the Labor party dropped its longstanding objection to such a state during the 1996 election campaign.

Where the Syrian track was concerned, there was less need for continued concealment. For reasons that were (and remain) difficult to fathom, Assad refused to take the Golan Heights back even on the extraordinarily generous terms that the Labor government was reportedly offering him. Thus rebuffed, Rabin and Peres were released from the need to go on denying that they were trying to do with the Golan Heights what they were trying to do.

NOW, FROM the very beginning there were those—and I was among them—who beyond being convinced that the goal of the "peace process" was a turnover by Israel of the West Bank and Gaza to the PLO and of the Golan Heights to Syria, were also persuaded that this process would bring not peace but another major war. Some of us had alternative schemes for pursuing peace, but I for one was just as skeptical of those schemes as I was of the Rabin-Peres policy. To me it seemed that the least reckless course for Israel was to hold tight and play for time—as much time as it would take for a genuine change of heart toward the Jewish state to develop in the Arab world.

Such a change, I thought, would eventually come through increasing democratization (and why should the Arab world be exempt from a trend in which everyone else was caught?). In the meantime, trying as the status quo might seem, it was tolerable and it could be lived with. And in any case, even granting much of what could be said against stalling, it was still safer than any of the proposed alternatives, all of which struck me as so premature that they could be thought of as a secular version of the sin known to Judaism as "forcing the end."

Of course Rabin and Peres rejected this line of reasoning. Their premise was precisely that a change of heart toward Israel had *already* occurred among the Palestinians and in the Arab world generally. As Rabin read it, this change had largely been brought about by weakness. The break-up of the Soviet Union had deprived the Arabs of their main armorer and political backer, which meant that they no longer had any serious hope of destroying Israel by direct military assault. Much as it would stick in their craw, they would now be forced to settle for a lot less than they had always dreamed of achieving. Which was to say that they would now finally agree to accept the existence of a sovereign Jewish state in their midst and to make peace with it.

But would Israel for its part agree to accept the condition attached to this putative new willingness of the Arabs to call off the war they had been waging against the Jewish state since 1948: namely, full Palestinian sovereignty in Gaza, the West Bank, and East Jerusalem, and the return of the Golan Heights to Syria? If, as I have suggested, Rabin really did set out imagining that he could escape or soften this condition, it seems unlikely that in his heart of hearts he succeeded in fooling himself for very long about the inexorable implications of his policy.

It seems even less likely that Peres ever entertained any such fantasy at all. But he had his own, even wilder, fantasy: that the Middle East stood poised on the brink of a new age in which conflicts like the one between Israel and the Arab world were becoming obsolete. What mattered in this "new Middle East" was not borders or guns but technology and commerce. The Arabs no longer wanted to make war; they wanted to make money. Hence they were ready to welcome Israel as a full partner in the elevation of their respective countries from poverty and backwardness to the economic condition of so many Singapores, Taiwans, and Hong Kongs.

Obviously, those of us who thought that the policies based on these analyses were a formula for war, not for peace, saw things very differently. We believed that the Palestinians, far from preparing at long last to make their peace with Israel, still regarded the land on which the Jewish state stood as belonging rightfully to them; we believed that they (along with the vast majority of their Arab and Islamic "brothers" throughout the Middle East) still took it for granted that the very existence of Israel, wherever its borders might be drawn, remained a political injustice and an affront to Islam; and we believed that they were still determined to rectify the injustice and eliminate the affront by wiping the Jewish state off the map.

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Guided by this perspective, we interpreted what looked like moves toward peace by the PLO not as a change of heart or mind but rather as a change of strategy. Instead of relying on the old hope of destroying Israel in one fell military swoop, the Palestinians were now putting their faith in the "strategy of stages" (also known as the "phased plan"). It was a strategy that called for them to establish first a foothold, and then a state, on as much territory as they could get the Israelis to surrender, and finally to use it as a base for future terrorist or other military operations in which, on one pretext or another, the whole Arab world would join in a mighty effort to achieve a final solution of its Israel problem.

IN POSITING that this was what the Palestinians were up to, we could rely on no lesser an authority than Yasir Arafat himself. On the very day that the Oslo accords were signed on the White House lawn, Arafat spoke from Washington on the radio to his people in Amman, Jordan, and told them that he had just taken the first step in carrying out the "strategy of stages." In the ensuing three-and-a-half years, in addressing Western audiences, he usually showed a face of moderation, but when speaking in Arabic he consistently looked forward to the *jihad*, the holy war, that would some day sweep away the unnatural abomination of a Jewish state from the territory sacred to Islam.

So committed were Rabin and Peres to the course on which they had embarked that they could scarcely afford to take such statements seriously; therefore they simply refused to do so. Invariably they pooh-poohed Arafat's visions of *jihad* as nothing more than a rhetorical bone being thrown to the extremists within his own camp. Peres once even went so far as to charge that a secret videotape of Arafat making one such speech in Gaza was a forgery. But he was later forced to retract the accusation when Arafat himself, probably reckoning—correctly—that it would cost him nothing, admitted that the tape was genuine.

More telling yet were Arafat's failure to keep the promise he had made under Oslo to eliminate the clauses in the PLO charter calling for the destruction of Israel, and the way Peres responded to that failure. The columnist Charles Krauthammer summed it all up in a piece in the *Weekly Standard*:

> The tortuous saga of the PLO charter is by now almost comical. Arafat first pledged to change it immediately after the Oslo 1 accords were signed in 1993. He did nothing of the sort. Two years later, at the Oslo 2 accords, . . . he sold that rug to Peres a second time. He pledged that now he would really change the charter. . . . [A]s the deadline approached, Arafat convened the Palestinian National Council and claimed that it had changed the charter.

In fact, however, although the PNC *announced* that it had amended the charter, not a single word was changed. All that happened was that a committee was set up and told to come back with new wording within six months. It was this, writes Krauthammer, that "Peres fatuously hailed . . . as the greatest ideological change in the Middle East in 100 years." Peres's judgment was echoed throughout the four corners of the earth, but even after the six-month deadline had passed, the committee had still not reported back, and the charter remained unamended.

SO MUCH for the alleged change of heart among the Palestinians. Then there was Egypt, the first Arab country to recognize Israel and to sign a peace treaty with it. Yet even after fifteen years of living under the regime of this treaty, the Egyptians showed little sign of diminished animosity toward the Jewish state or indeed toward Jews in general. Apart from many other symptoms, one stood out with special virulence: the controlled Egyptian press was full of the most egregious lies about Israel, as well as cartoons reminiscent of the Nazi period in their anti-Semitic ugliness, and Cairo was a leading center for the publication and distribution of anti-Semitic literature, including *The Protocols of the Elders of Zion*. According to the polls, moreover, most Egyptian intellectuals opposed the peace with Israel, as of course did the entire community of Islamic militants, while the Egyptian military still made its war plans on the assumption that Israel was the main enemy to be fought. All this, and more, was still going full swing even when the "peace process" with the Palestinians was also going full swing.*

But what about Jordan under King Hussein? Less than a year after Oslo, he became the second Arab head of state to sign a peace treaty with Is-

* For an account of Egypt's attitude and behavior toward Israel since the peace treaty was signed, see Rael Jean Isaac's "The Real Lessons of Camp David" (COMMENTARY, December 1993) and David Bar-Illan's "Egypt Against Israel" (COMMENTARY, September 1995).

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rael. The problem was, however, that the majority of Jordanian citizens were Palestinians, and few of them supported the deal; also opposed, as in Egypt, were the Islamic militants who, again as in Egypt, made up an increasingly important and influential segment of the population. If, then, the King himself had experienced a change of heart (though some said he had always been willing to coexist with Israel, despite the number of times he had gone to war against it), the Jordanian people had declined to follow suit.

And Syria? Assad was widely reported to have made a "strategic decision for peace," but whatever he may have intended by this, it did not seem to lessen by one whit his intransigent hostility toward Israel or to increase his willingness to conclude an agreement, no matter how sweet it might be to him, with the Jewish state. Before long, this had become obvious to everyone except then-Secretary of State Warren Christopher, who fell into the habit of running to Damascus practically once a week in a vain effort to woo Assad back into negotiations with Israel.

On Iraq, Libya, and Iran (not, of course, an Arab state but a key player in the Muslim world) there was no need to dwell in considering the question of a new willingness to come to terms with Israel. They never even bothered to pretend.

In short, where the supporters of the "peace process" saw a change of heart, we opponents saw a change of strategy. And where they saw Israeli withdrawal from the West Bank and Gaza as the necessary and sufficient condition for the acceptance of Israel by the Arab world, we saw any number of ways in which a war would sooner or later be triggered by the setting-up there of a Palestinian state.

There was one scenario that I found especially plausible. It involved the Lebanonization of Palestine—the outbreak of a civil war for control of the new state among Arafat's followers, other factions within the PLO, and the Muslim militants of Hamas and Islamic Jihad. Syria (which has always regarded that entire area as belonging to it) would then do just what it had done, and gotten away with, in Lebanon itself: it would seize upon the situation as a pretext to intervene and "restore order." To this Israel would have to respond, and in responding would soon find itself embroiled with Syrian and Palestinian troops. At that point, the other Arab states, together with Iran, would set aside their own internecine conflicts and join forces in one last campaign to rid themselves of the Jewish state. Chances are that this campaign would fail and that Israel would prevail in the end. But victory would come at a horrendous cost: many Israeli soldiers would die, and with the missiles available to Iraq and Syria that could easily reach Tel Aviv, Jerusalem, and Haifa, many civilians would die along with them.

There was another plausible scenario envisaged by some theorists of the "strategy of stages." Though the Palestinians would not be strong enough to take Israel on by themselves, they could use their new state as a sanctuary from which to launch terrorist attacks and guerrilla forays. They would do this for the express purpose of provoking Israeli incursions into their territory ("hot pursuit"), which in turn would draw the other Arab states into an all-out war.

Beset by these apprehensions, I was naturally relieved when Netanyahu, who I had good reason to think shared in them, won the election last May. And I was especially reassured to discover that the Jews of Israel went for him by a margin of landslide proportions (56-44, or 12 points), thereby demonstrating that most of them had not been seduced by Peres's fantasies about a "new Middle East." (By contrast, about 95 percent of the Arab citizens of Israel voted for Peres, which was why the final result looked like the "razor-thin" margin it misleadingly continues to be called in an effort to deny that Netanyahu emerged with a mandate.)

Nevertheless, my relief was clouded by the fact that I simply could not imagine how Netanyahu would be able to keep the train that Rabin and Peres had put on the tracks from continuing its mad rush toward the end of the line. So fast was the train going that stopping it would almost certainly prove impossible; and so far had it already traveled that there could be no turning it around or setting it in reverse. Then, when war finally broke out—the war for which Netanyahu's immediate predecessors had set the stage—it would be blamed not on their illusions but on his "hard-line intransigence."

And so in some part of me I felt that it would have been better if Peres had been reelected to reap the bitter fruits of his own policies. That way, when the worst came to the worst, everyone would at least clearly see where the responsibility lay, and the right lessons would be learned for the future (if, God willing, Israel was still there after the war and still had a future to argue about).

These, then, were the misgivings that darkened my response to Netanyahu's victory last May. And

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much sooner than I had anticipated—within the space of a mere three months after he had formed his government—there came a foretaste of how they would measure up to reality.

IN LATE September, Israel opened a new exit to an archeological tunnel in Jerusalem. Work on the tunnel had been going on for years without causing any fuss, but the new exit sparked a Palestinian protest that started in Ramallah and soon spread to five other locations in the West Bank and Gaza. As it spread, it also escalated—from marching to the throwing of stones and Molotov cocktails and finally to the firing of automatic weapons.

The stones and the Molotov cocktails, having become familiar during the *intifada*, were shocking only to the extent that they marked the reappearance of the violent Palestinian tactics which the "peace process" had presumably relegated to the past. But the new and much more shocking element was that Israelis were now being fired upon with the very guns that they themselves had placed in Palestinian hands. More specifically, they had placed these guns in the hands of the Palestinian police, who were there to keep order in the territories already under the control of Yasir Arafat's Palestinian Authority (PA) and whose job it was to prevent precisely such outbreaks as these. Instead of doing that job, however, they had joined with the demonstrators in attacking Israelis.

According to the Palestinians, they were fired on first by Israeli soldiers and only fired back in self-defense; according to the Israelis, it was the other way around. Israeli officials also charged that Arafat had instigated the demonstrations, and then either gave the Palestinian police permission to turn their weapons on the Israelis or did nothing to stop them. Though Arafat's version was granted the benefit of the doubt all over the world, what made the Israeli version more credible was the threats issued earlier by PA officials to do exactly what the Palestinian police had just done. To cite only one of many examples, PA Planning Minister Nabil Shaath had recently declared:

> As long as Israel goes forward [with the "peace process"] there are no problems, which is why we observe the agreements of peace and nonviolence. . . . But if and when Israel will say, "That's it, we won't talk about Jerusalem, we won't return refugees, we won't dismantle settlements, and we won't retreat from borders," then all acts of violence will return. Except that this time we'll have 30,000 armed Palestinian soldiers who will operate in areas in which we have unprecedented elements of freedom.

In the event, it took a lot less for these "acts of violence" to return. By the time a halt was called by Arafat (who only about a week before had told the Palestinian police that "Our blood is cheap for Jerusalem"), 73 people lay dead and about 1,500 were left injured—many more Palestinians than Israelis, who, when it comes to a firefight, still very much have the upper hand.

The Palestinians claimed that they were outraged because the tunnel would—and was intended by the Israelis to—undermine the physical foundations of the nearby al-Aqsa mosque, and (in the words of Arafat quoted by a Saudi newspaper) "demote the mosque's importance" as part of a conspiracy "to wipe out Arabic culture in Palestine." The Palestinian Authority described the tunnel as an "aggression" against the mosque and a "desecration of the holy places." And the Arab League, going even further, called the tunnel "part of an Israeli Zionist plot to destroy the Aqsa mosque."

At first this claim that the tunnel endangered the al-Aqsa mosque and other Islamic holy places on the Temple Mount was taken at face value. The *Washington Post* spoke of "Israel's tampering with the ground beneath the Dome of the Rock and al-Aqsa mosque." National Public Radio also gave implicit credence to the Palestinian "claim [that] the project threatens the stability of the al-Aqsa mosque." And on ABC television Peter Jennings announced with every indication of assent that "Muslims say the tunnel cuts under their compound and call it a crime against Islam."

Yet this charge was so blatantly false that it could easily have been exposed as a lie by any journalist who bothered looking into it. Thus Hershel Shanks, the editor of *Biblical Archaeology Review*, who assailed Netanyahu for the "extremely dumb idea" of opening the new exit ("The man has no judgment"), was still forced to concede that the Palestinians had no case against the tunnel. In an op-ed piece in the *Washington Post*, he wrote:

> The tunnel . . . is *outside* the Temple Mount. It threatens no religious sites. The al-Aqsa mosque is at the other end of the Temple Mount, as far away as you can get. The tunnel is well-supported with steel girders.

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Furthermore, Shanks explained,

> The opening of the tunnel makes eminent good sense from an archeological, touristic, and even spiritual viewpoint. It enables ten times as many people to see the archeological treasures in the tunnel and to experience the grandeur of the adjacent Temple Mount as can see it without the new tunnel exit. It is also a boon to Arab businessmen on the traditional Via Dolorosa . . . , where the tourists would exit from the tunnel.

Yet disposing of the preposterous Palestinian excuse for resorting to armed attack did not prevent Shanks from continuing to blame Netanyahu. This trick he pulled off by falling back on the position that the tunnel had to be seen in a wider context. It was, he said, another of the many "humiliations" to which Netanyahu had subjected Arafat in particular and the Palestinian people in general in the 100 days since he had assumed office. It was a "provocation" that "they were indeed looking for—and may well have welcomed," an occasion "to vent their spleen at Netanyahu's repeated affronts."

Harping on the "humiliations" and "provocations" that Arafat and his people had endured at the hands of Netanyahu soon became the favored tactic of the Palestinians and their apologists (i.e., practically everyone else). The main such provocation, they all kept repeating, was Netanyahu's failure to withdraw from Hebron immediately upon assuming office. Yet hardly anyone chose to recall that it was Shimon Peres—the principal author of the "peace process"—who had first unilaterally extended the formerly agreed-upon deadline for Israeli withdrawal from Hebron, and had then unilaterally extended it again because he wanted to wait until the election was over. Netanyahu merely announced another extension until he could be satisfied that the 400 or so Jews and the Jewish holy places located there would be safe from attack.

Besides dragging his feet over Hebron, Netanyahu was accused of committing many other "affronts." These were conveniently summed up by Shanks, the concluding section of whose piece was a perfect compendium of the conventional wisdom and politically-correct interpretation of this crisis:

> . . . refusing to see Yasir Arafat, making him wait to travel in his helicopter within the West Bank, finally shaking hands with him but with a near grimace on [Netanyahu's] face, announcing the construction of more Jewish housing on the West Bank, maintaining needless economic restrictions on near-desperate Palestinian workers and products under the guise of security needs, and in general allowing Israeli soldiers to treat Palestinians without dignity or respect.

Never mind that Yitzhak Rabin—who was now revered to the point of idolatry by the likes of Shanks—also had a "grimace on his face" when he first shook Arafat's hand. Never mind that under Netanyahu there had been a de-facto freeze on "Jewish housing on the West Bank." Never mind that it was Shimon Peres who decided to close the borders against "near-desperate Palestinian workers," not under the "guise [!] of security needs" but after a wave of suicide bombers had infiltrated from the West Bank and murdered dozens of Israelis. Never mind, too, that, as Charles Krauthammer pointed out, "Netanyahu, in his 100 days in office, had already eased these restrictions considerably, more than doubling the number of Palestinians allowed in daily from 22,000 to 50,000," and that he "was negotiating with Arafat for further increases when Arafat called his little war." Never mind that the Palestinians complained just as bitterly about being treated by Israeli soldiers "without dignity or respect" when Rabin and Peres were in office as they did after Netanyahu took over.

All such considerations were simply brushed aside in the almost universal assault upon Netanyahu's character and his policies. But if the particulars of the indictment against him were utter nonsense, did he do anything to merit this assault? Did he repudiate the Oslo agreements with the Palestinians signed by his predecessors? No, he pledged to carry out those agreements, including the one covering withdrawal from Hebron. Did he refuse to enter into further negotiations with the Palestinians even before agreeing to meet face to face with Arafat? No, upon assuming office he sent his Foreign Minister and his chief adviser on foreign policy to Arafat (and he also offered to resume negotiations with the Syrians).

What then did Netanyahu do? The answer is that what he did, and all that he did, was to apply the brakes, and rather gently at that, to the "peace process"; all that he did was to slow down ever so slightly the train which Rabin and Peres had set on the tracks. Given his own convictions, and given the mandate he had received from the Jews of Israel, such a slowdown was the very *least* he

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could try. And yet even for this, the roof fell in on his head.

"If you were a Palestinian," he was asked by *Time* magazine, "how do you think you would regard Netanyahu?" To which he replied: "If I read the controlled Palestinian media, I would think that, as they call me, I'm worse than Hitler." Nor was it only the Palestinians who portrayed him in such terms; Jews did, too. "There's a silly debate raging in some quarters these days," wrote one Jewish commentator in a disgraceful piece in the *Forward*, an Anglo-Jewish weekly in New York:

> Is Benjamin Netanyahu merely incompetent or is he instead actually evil? But the debate is pointless, because it ignores the fact that incompetence and evil are not mutually exclusive.

But even short of being represented as another Hitler, Netanyahu was accused (by another fellow Jew, the famous Israeli novelist Amos Oz) of trying to "manipulate" Israel into "a Holy Places war" and even (in an almost word-for-word echo of Arafat's line) "a religious war against Islam." A little short of that he was denounced—sometimes in the same breath and by the same person—of having no strategy at all and of deliberately trying to scuttle the "peace process" while paying it pious lip service. And thanks to Netanyahu, columnists like Anthony Lewis, Thomas L. Friedman, and Robert Novak, deprived by Rabin and Peres of the delight they had formerly taken in attacking and defaming Israel, were happily back in business at the same old stand.

WHAT DOES all this tell us about the "peace process"? The term seems to suggest a series of negotiations toward a not yet settled end. Yet anyone who did not get it before must now realize that this is not at all how the words "peace process" are generally understood when applied to the Arab-Israeli conflict. In this instance, "peace" signifies a destination *already* determined in advance, and "process" refers not to the give-and-take of negotiation but rather to the (not-so) gradual movement of Israel toward that destination—the borders in which it lived before the Six-Day war of 1967, possibly (but only barely so) with a few minor modifications dictated by security concerns. So long as Israel is seen as progressing steadily toward that goal, everything goes smoothly and swimmingly.

Well, not quite everything. If the Palestinians decide that the pace of withdrawal is too slow, they reserve the right to fire warning shots across the bow in the form of terrorism, which they did even during the days when Rabin and Peres were bending over backward to accommodate them. And it has now been made clear that if the Israelis cease bending over backward, the Palestinians also reserve the right to bring them to heel by starting a little war.

In the way it lined up on the tunnel crisis, the rest of the world has now made another thing clear: one false move by the Israelis (that is, one move regarded as false by the Palestinians) and farewell to all the good will Israel has enjoyed in the past three years and about which enthusiasts of the "peace process" have so often boasted as one of the great dividends of this policy. A striking case in point were the denunciations of Netanyahu for opening the tunnel, but not of Arafat for opening fire, that streamed forth from one foreign ministry after another. A similarly telling example was offered by the goings-on at the UN. The once-popular pastime of ganging up on Israel had for a season become less fashionable there, but it now returned with a vengeance in the form of a resolution condemning Israel which the Security Council passed by a vote of 14-0 (with the United States abstaining instead of exercising its veto). And finally there was the reaction of the Arab states traditionally least hostile to Israel. Some of these had become relatively warm as a result of the "peace process," but they now put on a demonstration of how ready they were to turn on a dime. As a report in the *Jerusalem Post* described it:

> King Hassan of Morocco . . . ordered a complete freeze on his government's relations with Israel. . . . The president of Tunis . . . followed suit and ordered formal contacts between his country and the Netanyahu government severed. Oil-rich Qatar . . . postponed the opening of [its] trade office in Israel and called off direct meetings with Israeli officials.

In other words, the world has shown that its conception of the "peace process" comfortably embraces the right of the Palestinians to resort to terrorism and war whenever they become dissatisfied with the tempo or the result of negotiations.

Amazing as this may seem under the aegis of an arrangement whose very *raison d'être* is to replace violence with negotiation, it makes perfect sense when we remind ourselves once again that as ap-

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plied to the Arab-Israeli conflict, the term "peace process" is only a euphemism for steady Israeli progress toward withdrawal from the territories it captured in the Six-Day war and the setting-up of a Palestinian state in the West Bank and Gaza.

With East Jerusalem as its capital? Both Rabin and Peres vowed that Jerusalem would never be divided again, and Netanyahu has reiterated that vow. But yet another thing that has now become completely clear is that the Palestinians will refuse to make a deal that does not give them control over East Jerusalem. In starting the little war over the tunnel, Arafat said that he was fighting against "the Judaization of Jerusalem." The implication is that he not only reserves the right to use force whenever he dislikes the way the "process" is proceeding, but that he especially regards Jerusalem as a *casus belli*.

And why not, from his point of view? Under Rabin and Peres, the PA opened and maintained quasi-governmental offices in East Jerusalem and received foreign dignitaries there—all in violation of Oslo and without interference by Israel. Meanwhile, even as the Labor government was vehemently declaring its commitment to the "eternal" unification of Jerusalem as Israel's capital, more and more talk was being heard from the Israeli Left to the effect that for all practical purposes Jerusalem was already divided and that the Palestinians had a perfect right to a "share" of sovereignty over the city. All this understandably led the Palestinians to expect that the already-decided-upon "peace" package included East Jerusalem, and again the rest of the world (never having recognized its annexation by Israel anyway) agreed.

So did the Israeli Left, whose response to the tunnel crisis was to start talking again, and even more brazenly, about the redivision of Jerusalem. Here, for example, was how Amos Oz stated the case:

> Israel must stop shutting its eyes and yelling "Jerusalem will never be divided." We had better realize that Jerusalem is in fact divided by an iron curtain of fear and hatred. The true questions are: Can it be reunited? Should it be reunited? And what will be the cost of its reunification? The cost is a moral and mental recognition of the fact that we Israelis are not alone in Jerusalem, just as we are not alone in this country. We must accept others, respect their position, and meet them somewhere halfway.

If Netanyahu holds out even against this, he will be denounced as a "deal-breaker" and set upon with a ferocity that will make the flap over the tunnel look like a pat on the head.

What is more, the United States will lead the assault. It has become a cliché that Bill Clinton is friendlier to Israel than any American President before him, which may be true but which means much less than those who take comfort in it realize. Indeed, if George Bush, who had no great love for Israel, had beaten Clinton in 1992, he too would have turned into Israel's best friend for the simple reason that Rabin and Peres would have provided him with no occasion for friction. After all, the "peace process" into which they entered on their own initiative went beyond anything Bush or even the Arabists in the State Department had ever dared demand, however much they might have wished to push Israel in that direction. Offered a free ride, Clinton happily took it and milked it for everything it was politically worth. So would George Bush have done if he had been confronted with Rabin and Peres instead of the obdurate Yitzhak Shamir.

Conversely, Clinton would have run into much the same problem with Shamir as Bush did, just as he ran into a problem with Netanyahu. With the free ride over, and without an election to worry about, Clinton will no longer hesitate, as he did over the tunnel, to lay down the law to Netanyahu. Even before election day, Clinton was told exactly how to do this by Thomas Friedman in a *New York Times* column written in the form of the lecture he expected the President to deliver to the Prime Minister some time after November 5; and Robert Novak (joined by his old partner Rowland Evans, who came out of retirement as a columnist for a day because he could not bear to miss taking another shot at Israel) paraded the examples of George Bush, Jimmy Carter, and Dwight Eisenhower before Clinton in exhorting him to "stand up to Bibi Netanyahu."

In taking the kind of advice he was offered by Evans and Novak, and in following some such script as was prepared for him by Friedman, Clinton will sincerely believe that he is pushing Israel toward peace. One must in charity assume that all other supporters of the process (well, almost all) in Europe and America—and most certainly in Israel—also sincerely believe that it will bring peace. But what about President Hosni Mubarak of Egypt and King Hussein of Jordan? Do they sincerely believe that a return by Israel to the pre-

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'67 borders is a formula for peace? I for one doubt it. They may as individuals hope for a good outcome, but how, knowing what they know about the Palestinians and their own peoples and the other Arab nations, can they be blind to the persistence of the old determination to wipe Israel off the map?

But leaving such speculations aside, what we can reasonably infer from their response to the tunnel crisis is that their *own* willingness to maintain even minimally decent relations with Israel is strictly conditioned upon Israel's willingness to move forward quickly toward the predetermined goals of the "peace process."

More ominously yet, they do not shy away from invoking the specter of war, especially now that they can blame it on Netanyahu. Thus at the summit meeting hastily convened at the White House by Bill Clinton to deal with the tunnel crisis, Hussein first told Netanyahu that he was "deeply disappointed" in him for having brought the region to "the edge of the abyss." Then a few days later he spelled it all out. Referring back to the Iraqi missile attacks on Israel during the Gulf war, the King declared in language that sounded more like a threat than a prediction:

> In the current situation, if we do not stride strongly forward to achieve peace, everything imaginable can happen, including a revival of 1991 when Netanyahu wore his gas mask on television. The alternative to peace is more awful than we can imagine.

For his part, Mubarak was so disgusted with Netanyahu that he refused to attend the summit. The purpose of the meeting was to pressure Netanyahu into closing the tunnel and/or setting a definite date for withdrawal from Hebron. But when it ended with nothing more than an agreement to resume negotiations, Mubarak felt "vindicated," and one of his top political advisers, Osma Baz, warned—again in language that sounded more like a threat than a prediction—that "The Palestinians will take up arms . . . to resist foreign occupation and domination." Those other great moderates, the Saudis, similarly concluded that the summit had left "Palestinians with one option: to return to the fight." A few weeks later, the Syrians, not to be outdone by such moderates, announced that Israel was "preparing the region for a new war" and declared that the time had come for the Arabs "to consider options other than the peace process."

SOME WESTERN diplomats in the Middle East dismiss Arab war talk as mere "bluster," the aim of which is to topple Netanyahu or force him to form a national-unity government with Labor, bringing Peres back in as Foreign Minister. In corroboration of this theory, a piece in the *Jerusalem Post* by Steve Rodan quotes several leading Palestinian and Egyptian officials who

> acknowledge that they were disappointed that the gun battles between Palestinian soldiers and Israeli troops did not lead to the passage of a motion of no-confidence in Netanyahu. "The truth is we gave Labor an excellent chance to get rid of Netanyahu and it didn't seize the opportunity," a senior PA official says. "Some of us are saying that we spilled our blood to help Labor and it never helped us in return."

(Rumor in Washington has it that the Clinton administration shares this hope of either overthrowing Netanyahu or forcing him to bring Peres back in, and is quietly doing what it can to undermine the current government.)

But the most extraordinary detail in the Rodan piece comes from Ahmed Tala'at, an analyst with the Ibn Khaldoun Center in Cairo. Tala'at told Rodan that in spite of their "hysterical" campaign against Netanyahu, "privately, Arab leaders acknowledge that Netanyahu is proceeding with the peace process." In Tala'at's opinion, "what gets their goat . . . and drives their constituents wild, is his strident style." But can their objection to Netanyahu really be so frivolous? More likely what has caused these Arab leaders to become "hysterical" over him is that he is being tougher about security than Peres was, thereby making it more dangerous for them to launch the final *jihad* for which Arafat is constantly calling and in which they are readying themselves to serve.

But the main reason Western experts dismiss Arab war talk as empty bluster is their complacent assumption that the Arabs know they would lose to a militarily superior Israel. This assumption is not shared by a former Egyptian chief of staff who has flatly said that "The combined weaponry of the Arab states today exceeds that of Israel. If all these weapons were directed against Israel, the Arab states could defeat Israel." Why then should Mubarak, who not all that long ago described Israel as "a knife plunged into the heart of the nations of this region," allow a piece of paper signed by his late predecessor, Anwar Sadat, to deprive him of a chance to pull the knife out? In this con-

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nection, it is interesting to note that Mubarak's current Defense Minister, Mohammed Tantawi, recently announced that Egypt was conducting major military exercises to prepare itself for an Israeli attack.

As for King Hussein, he participated in the Six-Day war of 1967 even though the Israelis appealed to him to stay out, and while he did stay out of the Yom Kippur war in 1973, he sided with Saddam Hussein in the Gulf war of 1991 (a fact everyone seems to have forgotten). During the Gulf war, he permitted Iraq to fire missiles at Israel over Jordanian air space and he also allowed Iraqi officers the use of his air-force command-center facilities to help aim those missiles—the very missiles he had the *chutzpah* to bring up in warning that Netanyahu might again have to get out the gas mask he wore on television in 1991. In the light of this, and notwithstanding his new peace treaty with Israel, one wonders whether he will have the strength, or for that matter the desire, to withstand the pressure of his own people and of his Arab brothers to lend a hand when the next war breaks out.

The same experts who think that Israeli military superiority will deter the Arabs from going to war also think that they are too riven by internecine strife to come together in a common cause. Yet surely for Syria, Iraq, and Saudi Arabia—and for Iran as well—the opportunity to dispose of Israel once and for all would be more than enough to make them temporarily set their mutual hatreds aside and unite in a final *jihad*.

WHAT THEN is Netanyahu to do? What can he do?

I think Netanyahu always recognized that he was stuck with the legacy bequeathed to him by Rabin and Peres, and that he would be unable to reverse the process they set in motion; now it has also forcibly been brought home to him by the tunnel crisis that he will even be unable to slow the process to any significant extent. My guess is that he will respond by continuing to yield step by step to the inevitable, while making statements and gestures (such as he did at the White House summit and in the negotiations over Hebron) designed to show the people who voted for him that he is being as tough and as steadfast as circumstances permit.

That this will be a hard sell was already evident in the wake of the tunnel crisis, when the predictable attacks on him from the Israeli Left, led by an embittered and vindictive Shimon Peres, were compounded by the anger of many of his own supporters. In the American media the impression was conveyed that Netanyahu returned home from the Washington summit to a hero's welcome from his core constituencies, who were supposedly delighted by his refusal to bow to pressure by closing the tunnel or setting a date certain for withdrawal from Hebron. But this impression, like virtually all the reporting on the tunnel crisis, was highly misleading, as can be seen from the account in the *Jerusalem Report* offered by Yisrael Harel, a prominent member of the so-called "national camp":

> After Arafat's late-September bloodbath, Netanyahu voters expected him to end or at least suspend the policy of pullbacks. But instead of seeing murder committed with guns received from Israel as reason to annul the disastrous Oslo accords, Netanyahu rushed off to meet Arafat in Washington. There, nauseatingly, he groveled and called Arafat his "friend" and "partner." Worse: ignoring what the heads of Israeli intelligence told him, he announced to the world that his friend and partner had no idea that his forces were planning to murder Israeli soldiers and citizens in cold blood.

An editorial in the *Jerusalem Post* also lambasted Netanyahu for remaining silent about the many Palestinian violations of the Oslo accords:

> The Palestinian Authority has still not amended the Palestinian Covenant calling for Israel's destruction. . . . Similarly, the PA has refused to extradite . . . the eighteen terrorists Israel has requested . . .; it has failed to disarm Hamas and Islamic Jihad terrorists, or to take any serious action against these groups' organizational and financial infrastructure; and it is maintaining an armed "police force" 50-percent greater than what it is permitted under the agreements. In addition, rather than education for peace, as explicitly required by the agreement, Arafat and senior PA officials continue to praise terrorists, refer to Israel as "the enemy," and call openly for the use of violence. . . . None of these violations, however, have even been mentioned by the Netanyahu team in recent weeks. Indeed, to listen to the Prime Minister and his spokesmen, one would think all these violations had mysteriously disappeared.

But what most worries Netanyahu's unhappy (and perhaps by now even erstwhile) supporters on the Right is that, in Harel's words, "conces-

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sions and withdrawals the Left didn't implement, fearing wide popular opposition, will be implemented by Likud leader Netanyahu." They are right to be worried on this score. They are also right in sensing that Netanyahu refused for a long time to dwell on Palestinian violations because it would have created greater domestic political problems for him than he already had in implementing "the disastrous Oslo accords."

On the other hand, Netanyahu finally has gotten around to bringing up those violations, and he has stated through a spokesman that he will from now on keep one of his main campaign promises by demanding "reciprocity" from the Palestinians as the price of continuing with Oslo. But even leaving that issue aside, there is some consolation to be had for the hard-liners who voted for Netanyahu. For whereas the same "concessions and withdrawals" would undoubtedly have been implemented by the Left if it had remained in power, Netanyahu, understanding, as Rabin and Peres did not, that war is entailed by the legacy they left him, feels obliged to place a greater emphasis on security than they would have considered necessary.

This means, for a start, seeing to it that Israel's military strength is maintained and if at all possible increased—and already, indeed, according to the *New York Times*:

> With Syria reportedly about to hold new maneuvers near the Golan Heights, and after last month's outbreak of violence in the West Bank, . . . the military command was asking the government for an additional $1 billion to bolster the combat readiness of the armed forces.

The *Times* goes on to report that the Israeli military now recognizes that it must prepare for a "worst-case scenario" not unlike one of the two sketched out above:

> There are more violent eruptions in the West Bank, growing tension with Syria, more attacks by Islamic guerrillas in Southern Lebanon. Excessive Arab hopes in the power of a reelected President Clinton to influence Israel only leads to more frustration [resulting in still more violence].

On top of ensuring that Israel is militarily prepared, Netanyahu will also feel obliged to insist much more strongly than Peres would have done on borders that can be defended when war breaks out—and *that* means resisting a full withdrawal from the West Bank to the highly vulnerable pre-'67 lines, and refusing to turn the Golan Heights over to Assad.

Yigal Carmon, a former prime-ministerial adviser on counter-terrorism who was a member of the team sent by the Shamir government to negotiate with Syria after the Madrid Conference of 1991, fears that Netanyahu (wishing to be seen as the "good guy") may try to press forward with Rabin's proposal for full Israeli withdrawal from the Golan Heights. I myself find this hard to believe, even though it comes from a man with a long record of knowing what he is talking about. But even if Netanyahu were to attempt what Carmon fears, he would in my judgment be stopped cold by the mysterious intransigence that led Assad to reject Rabin's proposal in the first place, not to mention Israeli public opinion, which is still pretty solid on the issue. With a little help from Assad, Netanyahu can hold onto the Golan even without looking like the "bad guy" in American eyes.

However, resisting a full withdrawal from the West Bank to the pre-'67 borders—even apart from Jerusalem—will be more difficult and more dangerous. It could easily trigger mini-wars like the one that erupted over the tunnel, and one of these might then escalate, bringing the big war envisaged by the "strategy of stages" ahead of schedule and even before the actual establishment of the Palestinian state. But early or late, that big war will come. And everyone will say that it was caused not by the premature hopes of Rabin and Peres, or by the evil dreams of the Arab world, but by the policies of Benjamin Netanyahu, which will have been based on a sober expectation of the *jihad* ahead and will have been designed to avert an Israeli defeat.

UNLESS, OF course, my entire analysis is wrong. I pray that it is. Just as I have done at the conclusion of every one of my articles on this subject over the past four years,* I pray again that the apprehensions and anxieties they have expressed are ill-founded, and that the now-irreversible "peace process" will actually bring peace to Israel, and not the river of blood that I still cannot prevent myself from foreseeing.

* "Israel—With Grandchildren" (December 1995); "The Peace Process So Far" (December 1994); "Another Statement on the Peace Process" (June 1993); and "On the Peace Process" (April 1993).

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Bury My Heart at PBS

Walter A. McDougall

ACCORDING TO the writers and producers of *The West*, a nine-part documentary history recently aired on PBS, two "equally misleading" myths hold sway in the American mind. The first, once widely if not universally believed, depicts the story of the American West as a grim but glorious march of civilization against savage lands and peoples. The second, of more recent vintage, is its polar opposite: "the crimes of conquest and dispossession [are] allowed to overshadow everything else." But to Stephen Ives, the director of *The West*, and to Ken Burns, its executive producer, the truth is "far more complicated, and much more compelling" than these two myths would suggest; rather, the story of the West is "a story in which each of us can find a place and all can take pardonable pride."*

It was in light of this cheering promise that I turned on my television set, only to have my doubts kindled by the sequence which opens the first and every subsequent episode. It moves from aerial shots of natural beauty to images of a few remaining buffalo and a symbolic sunset, all accompanied on the soundtrack by a crescendo of Indian chants. Where, I wondered, was the Golden Gate Bridge, the Boeing aviation plant, the Hoover Dam, a Texas oil derrick, or any other totem of the white man's presence?

But to give the writers and producers their due, the chore they had taken on was enormous, even by comparison with Burns's previous projects for PBS—the Civil War and the history of baseball. Four centuries in the life of half a continent: surely compromises had to be made.

What some of those compromises entailed, however, became clear from the first segment itself, which disposes of "a thousand generations" of pre-Columbian history in a matter of minutes and three centuries of Spanish-American history in an hour. That means that the series concentrates overwhelmingly on the 19th century—coincidentally, the time when Burns's favorite source materials (photographs, diaries and letters, and folk music) became readily available. And if the West is truncated temporally, so too is it truncated geographically, being defined by the series as only those lands between the Missouri River (not the Mississippi, as claimed) and the Pacific that eventually became U.S. territory. Mexico and Canada are out, and there is only one, erroneous mention of Russian America (Alaska). By picking up the story when and where it does, the film

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* Preface to *The West: An Illustrated History*, by Geoffrey C. Ward, a companion volume to the television series. Little, Brown, 446 pages, $60.00.

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deletes the lengthy Anglo-American and French migration from the Atlantic to the Missouri, during which time there emerged the modes of settlement, the characteristic patterns of relations between whites and Indians, and the government policies which would be carried over into the Great Plains and Far West: in other words, at least half the plot.

As for the story that *is* told in *The West*, it follows the hint offered by the opening sequence. Although the first episode makes due mention of the fact that Indians fought constantly among themselves, that war and raiding were the main occupations of some tribes and slaves the measure of wealth in others, the narrative proper begins with the coming in 1527 of the Spanish explorer Cabeza de Vaca, who was befriended and eventually adulated by a few local Indian tribes in what is now Texas. This amazing tale of interracial harmony was unique, but is presented by the filmmakers as an example of what "might have been had European assumptions about the people already living there not been so circumscribed, had humility and respect not so often been outweighed by greed and arrogance." Predictably, the rest of the episode goes on to chronicle Spanish lust for gold, forced labor and forced conversions, Coronado's expedition, the Pueblo rebellion at Santa Fe, and Junipero Serra's missions in California, ending with the help given by Indians to Lewis and Clark and—the irony is underscored—the American explorers' promise to live forever at peace with the Nez Percé. (Sure enough, the last scene of the last segment will depict the death of the Nez Percé Chief Joseph, whom whites later drove out of his ancestral lands and never allowed to return.)

AND SO it goes. The second segment opens with Americans determined to "make the West—all of it—their own." Once again the film strikes a note of balance in observing that the Lakota (Sioux) drove the Kiowa and Crow out of the sacred Black Hills before the white man ever arrived, and ex-Governor Ann Richards of Texas is later brought on screen to defend the revolt of whites against the Mexican dictator Santa Ana. In between, settlers ply the Oregon Trail, the first pioneers trickle into California, and Brigham Young self-consciously plays Moses for Mormons in search of a promised land. By 1848, at the conclusion of the Mexican war, the West as defined by the film is already in American hands.

The legendary Cheyenne shaman Sweet Medicine, who prophesied the coming of the white man and the horse, seems also—we learn in episode three—to have prophesied an influx of whites in search of valuable "stones." So gold is discovered at Sutter's Mill, and we are instructed that "nothing in the West would ever be the same." One immediate effect of the Gold Rush is that 80 percent of California's 150,000 Indians perish from white violence, forced labor, or disease. (As these facts are related, generic Indian faces stare out, accusingly, from the screen.) On the Plains, the wagon trains of the Forty-niners unintentionally ravage the Indians further by introducing cholera, driving off game, and killing buffalo. Desperate tribes turn on one another until, in 1851, the federal government brokers the peace of Fort Laramie. But the Lakota will have none of it; three years later a powwow, called to resolve a dispute over a cow, ends with U.S. soldiers gunning down the Indians. Trust in the white man evaporates, and the West "would never be the same again"—again.

The fourth episode offers excellent coverage of the achievements of the Mormons in arid Utah and their persecution by a federal government hostile to their theocracy and to polygamy (a practice which Mormon women are quoted as hotly *defending*). The Mountain Meadows Massacre, in which Mormons and Payutes murdered an entire wagon train in 1857, is especially well done. But the unifying theme of this rich episode is the anarchy that devours the West during the Civil War as Quantrill's Confederate irregulars terrorize Kansas and the mad Methodist minister John Chivington leads the Colorado militia to victory over the Confederates in the furious battle of Glorietta Pass, later ordering his men to exterminate the Cheyenne camp at Sand Creek. After the Civil War, the Union army restores order, but the episode ends with another prophecy: Cheyenne chief Rock Forehead warns George Armstrong Custer that if he ever breaks his promise of peace, the Everywhere Spirit will make sure he is killed.

The fifth episode focuses, at long last, on the activities of whites independent of their conflict with the Indians. Charles Goodnight and Oliver Loving (the inspirations for Larry McMurtry's epic saga, *Lonesome Dove*) lead the first cattle drives to Kansas. When the Transcontinental Railway is finished, we learn yet again that "nothing would ever be the same"—but the effect highlighted by the film is less the railroad's role in unifying the country than its role in facilitating

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the slaughter of the buffalo. The bottom line is that "The machine arrived in the garden and the West was"—yes—"changed forever."

The predictable climax of the series is the Battle of Little Big Horn (1876), which takes up 45 minutes of the sixth episode. This event is rightly interpreted as a Pyrrhic victory for the Plains Indians, since the vengeful Americans promptly dispatch an army sufficient to corral Sitting Bull's Lakota once and for all. The army acts with the help of surrounding tribes, who fear the Lakota more than they hate the whites—a phenomenon *The West* does not stop to ponder, though its implications are worth a brief excursus.

In retrospect, it may seem obvious that the Indians should have banded together to resist the white invasion. But that was impossible, given the predatory habits of tribes like the Sioux, Apache, and Comanche. A second, more prudent strategy would have been to make treaties with the Great White Father and see to it that their terms were respected. But that, too, was impossible: peaceloving chiefs were regularly denounced as "old women" by their own young braves for whom raiding and war were the only means of attaining status and women.

The West muses wistfully on "what might have been," but the truth is that the fate of the Indians was sealed by the limitations of their culture, at least once it came into collision with the dynamism and the *freedom* of American society. In the companion book to the series, the real choice before the Indians is captured in a quotation from Abraham Lincoln, who wrote to the Cheyenne chief, Lean Bear:

> I really am not capable of advising you whether, in the providence of the Great Spirit, who is the great Father of us all, it is for you to maintain the habits and customs of your race, or adopt a new mode of life. I can only say that I can see no way in which your race is to become as numerous and prosperous as the white race except by living as they do, by the cultivation of the earth.

And reality is also captured in the words of a white reformer, a species whom the filmmakers seem to hold in contempt: "Education should seek the disintegration of the tribes . . . they should be educated, not as Indians, but as Americans."

In sum, the Indians might have done better in the short run had they been able to unite to oppose the whites, or in the long run had they adopted the white man's ways. What stymied them from doing either was the same atavism that ruined the Scots: primitive tribalism. The rest (to get back to our story) is anticlimax, symbolized by the courageous but futile flight of the Nez Percé under Chief Joseph.

In the seventh episode, "The Geography of Hope," the filmmakers attempt to introduce new drama through the struggle of settlers to carve out a life in the face of drought, floods, famine, blizzards, disease, and loneliness. But the story of white development is episodic and brief, and ethnic conflict is never more than ten minutes away. We are told that far from being a "white man's country," the West still remained "full" of Chinese, Mexicans, and Indians—hence the paranoia behind the Chinese Exclusion Act of 1882, the discrimination practiced against Hispanics, the establishment of reservations for Indians. Insult is added to injury as we witness parodies of old Spanish culture staged by city promoters in Los Angeles, and of Indian culture in Buffalo Bill's Wild West Show. A West caricatured, it is implied, is a West that has died.

And so to the final two episodes, which inform us how the endeavors of white reformers to found schools for Indians only hasten the destruction of their identity and provide an excuse for stealing much of their remaining land. In reaction, thousands of Plains Indians join the messianic "Ghost Dance" movement, whose prophets assure them magical protection against the white man's bullets. Panicky whites demand protection, and in the confusion that follows, Sitting Bull is murdered by a fellow Lakotan and 250 Indians are massacred at Wounded Knee in 1890. After the death of Chief Joseph of the Nez Percé, the series concludes with a round robin of experts who promise us that, although the story of the West is indeed a story of broken hearts and betrayals, it is also one of "spirit" and "hope," and that "the health of the land is the health of the people."

What this summary has not conveyed is that, except in a few torpid segments, *The West* is great entertainment. All the signature techniques of Burns's other productions are deployed, including a melodramatic screenplay loaded with irony, and haunting (if sometimes repetitive) photography and music. The series narrator, Peter Coyote, is excellent, and several "talking heads," especially the moon-faced writer

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N. Scott Momaday, are genuinely engaging. The problem with *The West* lies elsewhere, namely, in its historical analysis.

Take, for instance, those myths which the series is supposed to help us transcend. Is it really true that Americans used to believe in a story of westward expansion that romanticized the slaughter of Indians? That is not how I, for one, recall the many television Westerns of the 1950's and 60's. On the contrary, *Gunsmoke*, *Wagon Train*, *Rawhide*, *Cheyenne*, *Broken Arrow*, *Have Gun Will Travel*, the supremely satirical *Maverick*, and others invariably depicted bad whites and good ones; savage Indians and good ones; stereotypical Hispanics and heroic ones; devious Chinese, kind and wise ones, and mystical, frankly superior ones. The whole point of these Westerns was that most white men on the frontier were as wild as most Indians and had to be tamed by lawmen, preachers, women, and sometimes even by Indians.

If this was true of television, it was also largely true of the more than 1,700 Western movies made over the decades by Hollywood. Granted, the stock fare extolled law and order, but that theme was by no means wrapped up in race. To the contrary, a purely racial myth of the kind described by the makers of *The West* came to prevail only in the discourse of radical historians during and after the Vietnam war. It is in books like Richard Drinnon's *Facing West: The Metaphysics of Indian-Hating and Empire Building* (1980), Alexander Saxton's *The Rise and Fall of the White Republic* (1990), and Tom Engelhardt's *The End of Victory Culture* (1995), not to mention a popular best-seller like Dee Brown's *Bury My Heart at Wounded Knee* (1971), that we first read about an ideology validating the virtual genocide of peoples of color which allegedly conditioned American behavior from Plymouth Rock to Vietnam. Its claims notwithstanding, *The West* largely ratifies this second myth of "conquest and dispossession"; far from breaking new ground, it hoes what by now is quite an old row.

As IT happens, there *is* a "new" Western history, a movement founded by the scholars Patricia Nelson Limerick and Richard White, among others, and expounded in the *Western Historical Quarterly*. These new Western historians are hardly immune to today's academic fashions; but they nevertheless offer a useful corrective to older and now-stale conceptions, particularly the "frontier thesis" of Frederick Jackson Turner, with its sweeping assertions about the role of the Western idea in shaping American democracy. The new historians tend to stress the continuities in Western history rather than the disjunctures; they reject the idea that Western history ended with Wounded Knee; they are sensitive to the interplay of human societies with local ecologies; and they aim to resurrect the stories of ethnic groups, which they say were rendered "invisible" in the dominant American culture. I should add that they also attribute the errors of the old Western history to the fact that it was often written from the perspective of white males back East.

Some of these new historians were in fact called in to consult on *The West*. One can imagine their dismay upon being presented with a draft containing extensive material on outlaws and Indian wars but almost nothing on, for example, Mexican-Americans or the impact of mining and forestry on the environment. Worse yet, they were told that for all practical purposes the series was slated to end around 1900, which meant that a film purporting to transcend old stereotypes would be almost silent on any number of matters the new historians consider important: the stranglehold of the Southern Pacific Railroad on the land and industry of the Pacific coast; turn-of-the-century radical labor and political movements; Japanese immigration and the war scares it provoked from 1900 to 1924; the conservation movement, which created the national-park and national-forest systems; the birth of the film, aviation, and tourism industries; the revolution wrought by the automobile; the pivotal battles over water rights and California's drive to become the nation's biggest agricultural producer; the coming of the Okies in the Great Depression; the Pacific war, which more than any other event transformed the economy and demography of the American West; the postwar Sunbelt migration, which shifted the political, economic, and cultural centers of gravity of the entire United States to the West; and so forth.

The consultants won a few points, but they exercised little influence on the overall direction of the series. The result is that not only does *The West* fail to bury old myths, it remains uninformed by *any* larger context in which the history of the American West could take on meaning. One such context might have been the history of North America as a whole, in terms of which the filmmakers could have explained why it was that Americans succeeded in taming a continent where Spaniards, Russians, and Britons failed, and

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could thus have made a point about the power and the perils of freedom versus authoritarianism. Another might have been the history of the United States as a whole, against which it would have been possible to demonstrate how the movement westward was shaped by the East, and shaped the East in return. Still another might have been the history of other encounters between expanding civilizations and more primitive peoples, in which case instructive parallels could have been drawn between the American West and China, Siberia, South Africa, and Australia.

One can sympathize with a film team faced with the need to omit a great deal, to grip an audience of channel-surfers, and to appease a nettlesome committee of academic consultants. But when the authors boast about their 72 interviews, their 74 archival visits, and the 250 hours of film they shot, they are saying as much about the confusion as about the comprehensiveness of their approach. Reportedly, the project went off in so many directions that Ken Burns himself had to be called in to restore some kind of focus. After many nights and weekends in the editing room he succeeded, but only by sticking for the most part to convention: the whites advance, the Indians weep, and by 1890 it is all pretty much over.

If the series disappoints on the level of historical analysis, how does it fare as philosophy?

An initial clue to the message concealed in the medium lies in the quotation that appears on the frontispiece to the companion volume. It is the first of many sayings we are given by Chief Joseph:

> Do not misunderstand me, but understand me fully [and] my affection for the land. I never said the land was mine to do with as I chose. The one who has the right to dispose of it is the one who has created it. I claim a right to live on my land, and accord you the privilege to live on yours.

This is a touching sentiment, but a logical muddle. First, Joseph denies that he owns the land and says it belongs to the Creator. Then he claims a right to "his" land, while granting whites possession of theirs. If, however, the basis of the Indians' claim was an appeal to Providence, one would have to say it was fruitless: the Everywhere Spirit, after all, lost out to the god of Manifest Destiny. And if the basis of the claim was live-and-let-live, it was not only utopian but routinely violated by the Indian tribes themselves in their incessant rivalry with one another. *The West* would have performed a great service had it pointed out that Indian concepts of property were, in fact, at least as ambiguous, if not as hypocritical, as those of the law-twisting, treaty-breaking Americans. Instead, the film tacitly endorses the notion, propagated as well by such otherwise disparate cultural authorities as the movie *Pocahontas* and the National History Standards, that the white man's original sin was the idea of private property.

A second clue lies in *The West*'s questioning of objective reality. N. Scott Momaday says on screen that the West "is a landscape that has to be seen in order to be believed, and may have to be believed in order to be seen." The scriptwriter Dayton Duncan concurs; what he learned most from working on this film, he writes, was the truth of Momaday's mystical paradox, that in the West "facts—reality—are often driven by dreams."

What is the dream dreamed by *The West*? It is that in the beginning, the West—not only the Indians, but the landscape itself—was "alive." Then, as whites advanced, things died—not only people but animals, vegetables, minerals. Yet we learn at the end that the *spirit*, the "dream," did not die, and that the primordial West is still a "repository of hope."

But hope of what? That the verdict of history is reversible? Something like that, indeed, is suggested by Duncan in an essay which concludes the companion volume to the series. Meditating on Monument Valley, whose spooky stone monoliths make it "one of the most appropriate symbols of the West," Duncan recalls the Anasazi, a mighty pre-Columbian civilization that disappeared without a trace, and implies that today's tourists, in their RV's and buses, may prove no less ephemeral:

> Stories are usually linear. But history can be circular, unending, returning to essentially the same place again and again, like a song with many verses but the same refrain. Some Native Americans have always contended that history revolves this way, referring to a Sacred Hoop or large Medicine Wheel. . . .

In 1951 Walter Prescott Webb, a Western historian of the Turner school, wrote that since the closing of the frontier, Americans have had "a great pain in the heart, and we are always trying to get [the frontier] back again." But there are

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only two ways to get the frontier back. Either Western civilization will self-destruct, and North America will return to the Stone Age; or Americans themselves will "convert" to the belief-system and way of life of the Indians. Since neither is a likely prospect, we are left, precisely, with the "dream," which, like so many dreams, is perhaps best understood as a reaction to, and a protest against, reality.

In the end, the dream which forms the entire subtext of *The West* is a protest against Moses and Jesus, whose Father God stripped Mother Earth of her divinity. It is a protest against agriculture, which first inspired men to imagine that the land belonged to them, not they to the land. It is a protest against science and Enlightenment reason, which objectified nature and man, celebrated material culture, and hastened what Max Weber would call the desacralization of the physical world. It is a protest against the nation-state, for that above all is what enabled Americans to prevail over disorganized Indians and Hispanics. It is a protest against things as they are, and a denial that things *are* as they are.

A dream, then, and a protest. As purveyors of infotainment, the makers of *The West* seem to have set out, like Forty-niners, on a long, rugged trek in search of riches. By all accounts, they succeeded—the book deal alone was worth $2 million. But as educators, they set out like the passengers in John Ford's film *Stagecoach*, circling back by the end of their journey to the same Monument Valley of myths they presumed to have escaped.

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Federalism (Cont'd.)

David B. Rivkin, Jr. & Lee A. Casey

EVER SINCE the New Deal, when it rubber-stamped bill after bill augmenting the authority of the President and Congress to regulate the states (as well as private activities once controlled only by the states), the Supreme Court has established itself as a champion of the federal government, granting it vast powers over all areas of our national life. Indeed, since the 1950's the Court has moved beyond being a mere enabler to become a leader in the expansion of federal authority, further eroding the prescribed constitutional allocation of power among Washington, the states, and the people.

Only recently, under Chief Justice William Rehnquist, has the Court come to divide, almost evenly, between those who favor bolstering Washington's power and those who prefer to devolve greater responsibility to the states or the people. Though it was not much talked about, here was another crucial issue in this year's presidential election. Should any of the nine sitting Justices retire or die in office over the next four years, the newly reelected Bill Clinton will be in a position to exercise a profound influence on the shape of the American "union" for a generation to come.

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A number of recent cases illustrate the almost schizophrenic attitude of the present Court toward the proper division of power among units of government. Without question the most significant is *United States* v. *Lopez* (1995).* In a five-to-four ruling, *Lopez* overturned the conviction of a teenager for carrying a concealed handgun to school, an act forbidden by the Gun-Free School Zone Act of 1990. The defendant had challenged the law on the grounds that, in enacting it, Congress had exceeded its authority by usurping a function of government—local law enforcement—which properly belonged to state and municipal authorities. The Supreme Court agreed, holding that the federal gun law, though premised on the Constitution's commerce clause, "neither regulates a commercial activity nor contains a requirement that the possession be connected in any way to interstate commerce."

This ruling marks a watershed in the Court's jurisprudence. (Needless to say, no judgment is here intended on the desirability of allowing guns in schools.) The commerce clause was fashioned by its authors in comparatively modest terms, giving Congress the ability to ensure a single national market. But from the New Deal through the Great Society, it has been invoked time and again as the basis on which federal lawmakers—in violation of

* For an extended discussion of *Lopez* within the context of the Founding Fathers' conception of federalism, see Wilfred M. McClay, "A More Perfect Union?" COMMENTARY, September 1995.

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the Framers' design of a national government with enumerated and limited powers—have exercised authority over an extraordinarily wide range of activities bearing little if any relation to interstate commerce.

A high-water mark in this practice came as far back as the famous "wheat" case, *Wickard* v. *Filburn* (1942), in which the Court ruled that the federal government could forbid a farmer to grow wheat for his own consumption, on the grounds that he might therefore refrain from buying bread at the market and (if many farmers did the same thing) in this way adversely affect interstate commerce. Many subsequent cases have occasioned even more artful stretching of both logic and law. In *Lopez*, the Court's dissenting minority put forth just such a specious chain of reasoning: possession of a gun might lead to use of a gun, which might lead to an interruption in the educational process, which might ultimately affect the quality of America's future workforce, which might affect our country's ability to compete in the global economy.

Once upon a time, such an attenuated set of links would almost certainly have been sufficient for something like the Gun-Free School Zone Act to pass muster with the Court; but the Rehnquist Court has now put a new standard in place. Henceforth, in keeping with the common-sense meaning of the words in the Constitution, federal legislation premised on the commerce clause must be linked to an "economic activity" that might "substantially affect" interstate commerce.

Although some liberal legal theoreticians like Laurence Tribe have tended to dismiss *Lopez*'s significance altogether, others have attacked it as a fundamentally anomalous departure from decades of established precedent. Decades of precedent are certainly at issue. Whether this vast legal-political-regulatory structure will now topple remains an open question. But already in the two years since *Lopez* was decided, some outcroppings have indeed fallen. In particular, a number of federal regulatory statutes and programs in widely different areas of the law have been called into doubt, and several lower courts have applied *Lopez* to limit federal power.

In one case decided this past May, for example, a federal district court in Alabama held that the federal "Superfund" statute, designed to facilitate the cleaning-up of contaminated land sites, could not be supported in those instances where no interstate commerce was at issue, as, for example, when the site in question no longer had active industrial operations. The cleaning-up of real property, the court noted, has "been traditionally a local matter falling under the police power of the states." In another recent decision, *Brozonkala* v. *Virginia Polytechnic and State University* (1996), a federal district court, again drawing on *Lopez*, held that provisions in the Violence Against Women Act which gave additional standing in federal court to victims of sexual assault were also an impermissible extension of the commerce clause. Congress, the judge ruled, could not apply that clause to intrastate activity that was not itself commercial in nature.

IN ADDITION to *Lopez*, a number of other important decisions illustrate the present Court's resolve (if by a slim margin) to set aside earlier judgments and move to restore rights and powers to the states. In *New York* v. *United States* (1992), for example, the Court breathed fresh life into the Tenth Amendment when it barred Congress from compelling state legislatures to implement certain federal environmental requirements.

The Tenth Amendment was originally drafted with the unambiguous intention of reserving to the states, or to the people, any powers the Constitution had not specifically delegated to the federal government. In line with this understanding, the Court made it quite clear in *New York* v. *United States* that state governments cannot be required to act as local administrative agents for the federal government, nor can state legislatures and bureaucracies be commandeered to serve as its enforcement mechanism. This is a significant turn of the wheel. As recently as 1985, in *Garcia* v. *San Antonio Metropolitan Transit Authority*, the Court had rendered the Tenth Amendment all but superfluous by ruling that states were subject to the provisions of the Fair Labor Standards Act just like any other employer, and that it was exclusively up to Congress, not the courts, to determine the extent of federal power over the states.

Not only does *New York* v. *United States* part company with *Garcia*, it may conceivably spell the beginning of the end of the entire system—indispensable for a variety of federal programs—by which Washington imposes mandates on the states to carry out favored federal policies. Legislation like the Clean Air Act and the Clean Water Act—to take just one area of regulatory law—is based almost entirely on the assumption that states will adopt plans and programs to meet standards set by the federal Environmental Protection Agency. Up until now, these laws have sur-

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vived challenge on the theory that states have the "choice" either of proceeding on their own to fulfill Washington's wishes or of having a federal program implemented for them by federal officials. With the new drift of the Court, this nonchoice (always accompanied by a stiff price tag) may become a thing of the past.

In a related move, the Court has also imparted new vigor to the Eleventh Amendment, which shields states from suits brought in federal courts by private parties. As recently as 1989, a closely divided Court had ruled that Congress, acting under the powers offered (again) by the commerce clause, might subject states to such lawsuits. But this year, in *Seminole Tribe of Florida* v. *Florida*, drawing implicitly on *Lopez* and explicitly on the Eleventh Amendment, the Court overruled its own precedent.

BUT ALL this, heartening as it may be, is only part of the story. Not only has the Court been closely divided in each of the cases discussed above, in a number of others it has exhibited a remarkably different attitude toward the powers of the federal government, and especially of the federal judiciary.

There is, for example, *U.S. Term Limits, Inc.* v. *Thornton* (1995) in which, by a vote of five to four, the Court struck down an amendment to the Arkansas state constitution that imposed term limits on its congressional delegation, holding that the qualifications for members of Congress are stated in the U.S. Constitution and the states retain no residual power to add or subtract from them. In reaching this conclusion, the *Thornton* majority effectively adopted the presumption that what the Constitution does not specifically allow is forbidden.

But as Justice Clarence Thomas pointed out in his dissenting opinion (joined by Justices Antonin Scalia, Sandra Day O'Connor, and Chief Justice William Rehnquist), the Framers' presumption was against federal and *for* state power: "Where the Constitution is silent about the exercise of a particular power—that is, where the Constitution does not speak either expressly or by necessary implication—the federal government lacks that power and the states enjoy it."

If *Thornton* is one indication that a majority of the Court can still be mustered for a centralizing decision, another is *Romer* v. *Evans*. Decided in May of this year by a vote of six to three, the *Romer* decision struck down an amendment to the Colorado constitution adopted by a statewide referendum—Amendment 2—which prohibited any state or local body from passing a law using "sexual orientation" as a basis for "protected status or claim of discrimination." The Court held that by impermissibly burdening the ability of homosexuals to obtain certain government benefits—i.e., the right to bring suit under state and local antidiscrimination laws—the amendment violated the equal-protection clause of the Fourteenth Amendment.

As Justice Scalia maintained in a scathing dissent, however, *Romer* represents the worst sort of judicial policy-making. The Court first assumed (rather than demonstrated) that the Colorado amendment was based on public hostility to homosexuality (as opposed, say, to a genuine desire to preserve traditional values), and then that this hostility was wrong, and only *then* did it formulate a legal rationale for striking down the amendment and sweeping aside the will of the majority of Colorado's voters. As an example of law written from the bench, *Romer* is in fact fundamentally akin to *Roe* v. *Wade*, where the Court, abandoning any effort actually to interpret the Constitution, first determined that women should have the right to decide whether or not to carry a child to term and only then formulated a legal rationale to support its determination.

Decisions like *Roe* and *Romer* have the effect of removing explosive issues from the political arena and eliminating the possibility of arriving at a consensus through the democratic processes established by the Constitution—processes which, by their nature, facilitate compromise and accommodate local conditions and attitudes. The inevitable result of such judicial policy-making is a radicalization of debate and, ultimately, a loss of confidence in democratic institutions themselves. There is no better example of this phenomenon than the descent of the abortion debate to a point where civil discourse has been replaced by sloganeering, shouting, and even terror.

But *Romer* does other damage as well. Its broad implication is not only that statutes have to be rationally related to a proper governmental purpose—uncontroversial in itself—but that they also cannot disadvantage a particular group for reasons the Court happens to consider wrongheaded. By importing the flawed "we-know-it-when-we-see-it" principle familiar from the obscenity debate, this effectively allows the courts to rule not merely on the constitutionality of legislative acts at the state level but upon their morality as well—a morality determined, capriciously, by the courts themselves.

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WHAT OF the future? The Supreme Court has been set on its present uncertain course in part by catching a good gust of the shifting political winds, but much more directly as a result of the change in its ranks and, indeed, the ranks of the entire federal judiciary over the last twelve years of Republican-party rule. Between them, Presidents Reagan and Bush appointed more than half the judges serving on federal courts. Out of the nine Supreme Court Justices today, three—O'Connor, Scalia, and Anthony Kennedy—were appointed by Reagan, while two—David Souter and Clarence Thomas—were appointed by President Bush. In addition, William Rehnquist was promoted to Chief Justice by Reagan.

On many issues involving the scope and extent of federal power, there are four Justices who generally accept the Constitution's limits and are prepared to vindicate the position of the states within our federal system. Another four, including the two appointees from President Clinton's first term—Ruth Bader Ginsburg and Stephen Breyer—can be counted on to defend the power of the federal government, often using the elastic commerce clause as their wedge. Then there is a swing voter, Anthony Kennedy, who went with the majority in *Lopez* but defected to the other side in both *Thornton* and *Romer*.

In sum, the Court is very narrowly balanced on this key issue, as indeed it is on others from affirmative action to free speech and beyond. Where it, as well as the lower courts, will go from here depends in large measure on the nominees who will be selected to fill prospective vacancies, on the political character of the man who will be selecting them, and on the disposition of the Senate which will be asked to confirm them.

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What Saddam Hussein Learned from Bill Clinton

Harvey Sicherman

In early September, shortly after Saddam Hussein moved Iraqi forces across the 37th parallel to attack his domestic enemies, many of whom looked to American and international protection, President Clinton went before the American people to declare "victory." A perplexed and alarmed public was told that the United States had whipped Iraq once again: a barrage of American cruise missiles had humiliated the dictator in front of his troops; a no-fly zone had been extended to the suburbs south of Baghdad, thereby helping to deter future attacks by Iraq on neighboring Kuwait; and the international coalition that five years earlier had fought to contain Iraq in the Gulf war of 1991 remained healthy and fit as ever.

This was the White House version of events, free of defects in every respect but one: it was false. The how and the why of the matter are worth another look.

The international coalition organized by the United States to defeat Iraq after its invasion of Kuwait in 1990 was formed out the most unpromising material. These were nations that could be distracted from their own rivalries and domestic troubles only by the enormity of Saddam's ambition. In the inner ring were Iraq's neighbors: Saudi Arabia, Egypt, Syria, Turkey, and the mini-states of the Persian Gulf; in the outer ring Britain, France, Germany, and Japan, with Gorbachev's fragmenting Soviet Union more acquiescent than allied. Merely to list their names is to highlight the differences between and among them.

In fighting and winning the Gulf war, George Bush wrought a series of near-miracles. He kept this unlikely coalition intact long enough for the Pentagon to get ready to fight; he rallied a majority in a reluctant, Democratic-controlled Congress; he got key members of the coalition to help pay for the staggering costs of waging a war in the silicon age; he kept Israel out of the fray even as Scud missiles rained down on Tel Aviv; he prevented Iran from seizing chunks of Iraqi territory; and above all, he kept America in charge of fighting the war.

Bush did not, however, actually run the war. Drawing a lesson from the failures of White House micromanagement in Vietnam, he allowed his generals, H. Norman Schwarzkopf and Colin Powell, to do the job on their own. But, after a brilliant air and ground campaign, the generals bungled. The mistake they made was not the one commonly attributed to them: namely, failing to march on Baghdad. For all their differences, members of both rings of the coalition shared a

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desire to defeat Saddam without dismembering Iraq; that, they agreed, would only remove a powerful barrier against the other unpredictable and aggressive regional giant, Iran. Rather, the blunder lay in having ended the war a day or two too soon.

While American airpower and artillery had indeed pulverized much of the Iraqi army, they had not destroyed the components which mattered the most. General Powell would not—it was, he notes in his memoirs, a matter of chivalry—preside over the slaughter of beaten men struggling in panic and mayhem up the highway of death from Kuwait City. But when the smoke cleared from the battlefield, it quickly became apparent that Iraq's elite Republican Guard, together with an estimated 500 helicopters and some other heavily armored ground units, had survived the war largely intact.

This military failure had a political corollary. Washington expected that in the wake of Iraq's overwhelming defeat, Saddam Hussein would be quickly overthrown. But when President Bush called for the people of Iraq to rise up, the only "people" who still mattered were members of the very same Sunni tribes who filled the ranks of the still-unbloodied Republican Guard, and who formed the remaining backbone of the regime's support.

As for the other "people," those who during the course of the war had rebelled against the Iraqi regime, they met a grim fate. The Shiites in the south, left without aid, were reconquered. The Kurds in the north fled by the tens of thousands to the mountains on the Turkish border, compelling the United States, in Operation Provide Comfort, to deploy air and ground forces to enable them to return home. The region inhabited by the Kurds was now placed under ambiguous international control, and an autonomous administration was set up, of unclear form and purpose.

Saddam, however, remained firmly in charge in Baghdad. A stunning American military triumph had thus been transformed into a protracted endgame. This was the precarious state of affairs George Bush bequeathed to Bill Clinton when he took office in January 1993.

THE CLINTON administration lost little time in clarifying American intentions. Within months, a new policy was articulated and given a name: "dual containment." The United States would apply its superior military position, plus the political force of the coalition of allies, to rein in both Iraq and Iran, the two aggressors in the region. Iraq, in particular, would remain under strict sanctions until it complied with all relevant United Nations resolutions, including those mandating the disposal of weapons of mass destruction.

The objective of U.S. policy was explicit: Iraq was no longer to be permitted to "threaten its neighbors or . . . suppress its people with impunity." To that end, the United States would undertake to support an opposition political body, the Iraqi National Congress, which had been organized by the Bush administration and was composed of Kurds, Iraqi Shiites, and dissident Sunni Muslims, and it would help them to topple Saddam Hussein. As for Iran, the other party to be contained, America would attempt to counter the regime of the ayatollahs until it ceased supporting international terrorism, ceased attempting to acquire weapons of mass destruction, and ceased abusing human rights.

At first, the policy seemed to work reasonably well, and at minimal economic and military cost—an example of cheap hawkery at its best. Approximately 15,000 U.S. military personnel were posted to the region, and some 200 aircraft patrolled the Iraqi no-fly zones from Turkish and other bases in the Gulf. Iraq, for the most part, remained quiescent. Summing up the Clinton administration's accomplishments after its first year, National Security Adviser Anthony Lake expressed confidence that, thanks to its new policy, the U.S. could

> sustain this situation for some time, in large measure because we have an understanding with our regional friends about the common threats and how to deal with them.

No sooner did Lake issue this optimistic forecast, however, than the American position came under challenge. The first blow, in May 1994, took the form of fighting between rival Kurdish factions in the Iraqi north as each side sought money and arms from outside patrons; it took months for American diplomats to negotiate a cease-fire. Then, in the autumn, Saddam suddenly began a build-up of armor along the border with Kuwait. Less than a division of American ground troops barred his way, and the cheap hawks, caught with their feathers down, were compelled to send reinforcements at enormous expense. This, coupled with a United Nations warning that further threatening movements

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would be met with force, finally induced the Iraqi dictator to withdraw.

As on other occasions, and notably in provoking the Gulf war itself, Saddam *seemed* in this crisis to be behaving like his own worst enemy. American diplomats had been struggling for months to dissuade the European nations and Russia from easing their sanctions on Iraq; if anything seemed tailor-made to convince them of the wisdom of the American position, it was renewed Iraqi aggressiveness. But even as we were congratulating ourselves on Saddam's stand-down, the costs of his feint were coming due, in the form of a military bill of over a *half-billion* dollars. Our Middle Eastern allies, less able than before to pay up, were also extremely reluctant to permit the prepositioning of equipment and large military installations on their territory. Other members of the coalition, especially Turkey, were showing the strain of maintaining prolonged sanctions against Iraq.

There was, in short, no way to blink the fact that we had failed to anticipate Saddam's moves. There was also no reason to believe he would not test us again.

STILL, BY 1996, Washington was able to take comfort in a number of signs of disarray within the dictator's own household. Saddam's son-in-law, Kemal, who had defected to Jordan the previous summer, had returned home only to be murdered at the hands of his own relatives and, plainly, at his father-in-law's behest. In addition to the breach thus exposed within the ruling family, the regime also appeared to be in desperate economic straits, and had finally assented to the stringent UN terms that would allow it to resume oil sales. Finally, the CIA had joined ranks with British, Saudi, and Jordanian intelligence to support a group of former Iraqi officials—the "National Accord"—who seemed to possess the requisite skills and connections for launching a serious coup.

The CIA's "black bag," however, proved to be quite empty. Early in the summer Saddam quashed the coup being prepared by the National Accord, which seems to have been penetrated from the start by his secret police. Then, in late July, the rival Kurdish factions came to blows once again, and Washington, unable to muster a mere $4 million to pay for a monitoring force, failed to stop the fighting.

This was Saddam's opening and he took it, deploying a sizable armored contingent south of the Kurdish "safe zone." Three times the U.S. warned him against moving northward, but three times it also declined to take military measures, despite the fact that the UN had authorized preemptive strikes in case of menacing behavior of just this sort. Then, one of the Kurdish factions invited Saddam in, and on August 31 he moved against the city of Irbil with tanks and approximately 30,000 troops. The Kurdish zone was overrun, and with it the Iraqi National Congress and the CIA's operational base. Iraqi agents went house to house, rounding up and executing opponents. Operation Provide Comfort provided no comfort.

Once again the U.S. had failed to anticipate Saddam. Shaken, the administration nevertheless still avoided a direct challenge; instead, at a cost of $50 million, it launched 44 cruise missiles to knock out air-defense facilities in another part of Iraq altogether, and enlarged the no-fly zone in the south. As for the Kurds whom the U.S. had pledged to protect, it abandoned most of them to their fate.

And that is where we are today. The crowing of the Clinton administration notwithstanding, Saddam was emphatically not humiliated in September, nor was the punishment inflicted on him in the least severe. To the contrary; the *anti*-Saddam coalition is now seriously frayed. Worst of all, American credibility in the region has fallen to a new low, and American policy itself, a mere five years after military triumph in the Gulf war, is in a shambles.

CONNOISSEURS OF the Clinton administration's foreign policy may find its handling of Iraq a familiar story, down to the habit of indulging in overwhelming rhetoric supported by underwhelming force.

For one thing, the White House seemed unable to grasp what it takes to steer a superpower and what it means to lead friendly states. Though it came into office professing multilateralism, the administration did a remarkably poor job of handling the coalition assembled by its predecessor. It did an especially poor job when it came to relations with Turkey, a key member.

Then there was the administration's predilection for the use of indecisive force. On at least two occasions, as we have seen, Clinton had ample cause to hit Saddam's forces in a way that would have changed the course of events. The first was in 1994, when Iraq's army massed on the Kuwaiti frontier; the second was this past August, on the

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eve of the Iraqi attack on Irbil. In behaving as we did, we may finally have taught Saddam, that most reluctant of pupils, just how to advance his cause without incurring a crippling American reaction.*

The consequences are clear in the calculations now being made by our allies in the region. In the wake of Irbil, oil-rich Saudi Arabia, the great strategic prize of the Middle East, declined to allow the United States to launch strikes on Iraq from bases on its territory. Even the Emir of Kuwait, citing Washington's failure to consult, initially balked at accepting additional American troops. Such wariness of American "protection" is, unfortunately, all too comprehensible in the light of American actions.

Iraq's strength is bound to increase in the months ahead. Saddam, who looks likely to last, continues to pile up conventional and unconventional weapons, and his neighbors find themselves under growing pressure to accommodate him. The United States, having failed to finish the game, thus faces a dismal prospect. It would surely take a spectacular act of aggression—an invasion of Kuwait, perhaps, or the launching of missiles at Israel?—to provoke an American reaction commensurate with the peril. And so the final price, especially in human lives, still remains to be paid for our most recent "victory" over Iraq.

* The same pattern has been visible in American policy toward Iran as well, the other country that was supposed to be contained by the administration's "dual-containment" policy. In the fall of 1994, the Iranians began to install anti-aircraft, Scud, and anti-ship missiles on strategically-situated islands in the Persian Gulf which they had seized two years earlier. By early 1995 they had also put several thousand troops ashore and were beginning to pose a direct threat to shipping and U.S. naval and ground forces in the area. Though General John Shalikashvili, chairman of the Joint Chiefs of Staff, criticized the build-up, no further action was taken.

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OBSERVATIONS

Who Was Langston Hughes?

Eric J. Sundquist

AT THE height of his fame, Langston Hughes (1902-67) was esteemed as "Shakespeare in Harlem," a sobriquet he borrowed for the title of a 1942 volume of poems. By this point in his career, Hughes had already been credited with some of the finest work in the great flowering of African-American literature known as the Harlem Renaissance. Just as significantly, he had also emerged as one of the most acclaimed writers of the radical Left.

Hughes never did abandon the language of racial protest; a revealing measure of his influence may be found in famous works whose titles are themselves quotations from his poems, among them James Baldwin's *Nobody Knows My Name*, Lorraine Hansberry's *A Raisin in the Sun*, and John Howard Griffin's *Black Like Me*. As such borrowings also suggest, however, Hughes has remained an important writer not for his politics alone, but because of his unusual genius for refining ideology into the language of popular art.

In his own self-estimate, Hughes was something of a "literary sharecropper." Like his principal mentors, Walt Whitman and Carl Sandburg, he took pride in being both a poet of the people and a paid professional, and few modern American writers sustained a talent so consistently and with such prodigious results: sixteen volumes of poetry, ten collections of short fiction, two novels, two volumes of autobiography, nine books for children, and more than two dozen works for the stage, not to mention miscellaneous books on black history, literary anthologies, radio and film scripts, and song lyrics. The publication of a new selection of Hughes's best short fiction,* together with the recent release of his *Collected Poems*,† makes it possible to appreciate anew the skill with which, in a remarkable range of styles and genres, he shaped his populist art to fit his times.

HUGHES FIRST came to notice, barely out of high school, with the publication in 1921 of "The Negro Speaks of Rivers," a poem composed in a ten-minute flash of inspiration on a trip to visit his estranged father in Mexico. As Hughes would remember the incident in *The Big Sea* (1940), the first of his autobiographies, the historical roots of African-American slavery suddenly unfolded before him in visionary cadence as his train crossed the Mississippi:

> I've known rivers ancient as
> the world and older than
> the flow of human blood
> in human veins.
> My soul has grown deep like
> the rivers. . . .

"The Negro Speaks of Rivers" remains one of Hughes's most anthologized poems, but its derivative romanticism gave little hint of the better verse to come. His true originality would lie instead in his response to the era's mass migration of blacks from the agrarian

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* *Langston Hughes: Short Stories*, edited by Akiba Sullivan Harper. Hill & Wang, 299 pp., $25.00.

† Edited by Arnold Rampersad and David Roessel, Knopf (1994).

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South to the urban North, which prompted him to fuse the rhythms of black speech and black music, particularly blues and jazz, under the loose constraints of modernist versification.

TO AN older generation steeped in both the high English style of Matthew Arnold and the theatrical black American dialect of Paul Laurence Dunbar, Hughes's initial work, written in the mundane language of jazz musicians, elevator boys, abused or abandoned lovers, domestic servants, lynching victims, and cabaret dancers, promised nothing less than a poetic revolution. He announced his credo in a resounding essay entitled "The Negro Artist and the Racial Mountain," influential for generations to come:

> Let the blare of Negro jazz bands and the bellowing voice of Bessie Smith singing Blues penetrate the closed ears of the colored near-intellectuals until they listen and perhaps understand. . . . We younger Negro artists who create now intend to express our individual dark-skinned selves without fear or shame.

In the best of Hughes's early work, vernacular serves as a contrapuntal force to poetic craft. In "The Weary Blues," for example, choruses of blues are embedded in a crushing psychological portrait of a musician's life; in "Brass Spittoons," the language of Scripture and black spirituals is joined to the demeaning orders issued to a black bellhop; and in "Cross," a poem about miscegenation, the simplicity and repetitions of colloquial speech are honed to a fine edge:

> My old man's a white old man
> And my old mother's black.
> If ever I cursed my white old man
> I take my curses back.
>
> If ever I cursed my black old mother
> And wished she were in hell,
> I'm sorry for that evil wish
> And now I wish her well. . . .

As such verse makes clear, Hughes's choice both of voice and of subject matter committed him to an art of social protest—something he came to by family inclination. His grandmother's first husband died in John Brown's raid on Harper's Ferry, while a great-uncle, John Mercer Langston, was a leading black politician of the post-Reconstruction years. From an early age, Hughes too was quick to stand up to racial prejudice, and his writings are filled with evidence of a lifelong struggle against racial bigotry, not only in the South but in the North and in California, and not least at the hands of self-styled progressives.

Nevertheless, during this early period Hughes remained faithful to the ameliorative tradition of Frederick Douglass, dwelling on the tense dialectic between race and citizenship. His praise of color consciousness—for instance, "I am a Negro: / Black as the night is black, / Black like the depths of my Africa"—was hardly contradicted by his hopeful celebration of assimilation. As the "darker brother" sent to "eat in the kitchen" while awaiting a place at the table of democracy, Hughes proclaimed in a famous early poem, "I, too, sing America."

In this respect, the exoticist poems sometimes said to typify Hughes's contribution to the Harlem Renaissance—"Danse Africaine" or "Nude Young Dancer," for example, both of which were featured in a landmark 1925 anthology, *The New Negro*—are, in fact, not very typical at all. Quickly leaping beyond the stylized primitivism of the day, Hughes had discovered a fluent language in which black American life could be immortalized without resort to caricature. Yet by the time the stock-market crash of 1929 dropped the curtain on the Harlem Renaissance, Hughes had grown altogether dissatisfied with the aesthetics of black modernism. His venue of choice would no longer be the *Crisis*, house organ of the NAACP, but rather *New Masses*, flagship of the Communist party.

CONCLUDING THAT "we were no longer in vogue . . . we Negroes," and bidding farewell to New York, he embarked on a reading tour of the South in 1931. By this point Hughes had joined the John Reed Club and worked alongside Whittaker Chambers as a director of the pro-Communist Suitcase Theater, and his art now made race a weapon of class warfare. Sardonic short stories like "Professor" and "Fine Accommodations" registered Hughes's dismay at the timidity of Southern black academics. His outrage at racial injustice was commemorated in *Scottsboro Limited*, a classic broadside comprising a one-act play and several poems, among them the blasphemous anti-lynching poem "Christ in Alabama."

The Southern tour proved to be a harbinger of Hughes's visit to the Soviet Union in 1932, which further stamped his work of the 1930's with an urgent, frequently paralyzing militancy. Hughes himself took an inordinate number of pages to recount the Soviet trip and its aftermath in his second autobiography, *I Wonder as I Wander* (1956), but he revealed little there of his core beliefs about Communism, which even now remain something of a mystery.

Hughes never joined the party, resisted many efforts to enlist his support for one radical project or another, and seemed little touched by the more serious devotion to ideology of those around him. At the same time, however, he served in 1934 as titular president of the League of Struggle for Negro Rights, the party's main African-American front, and few fellow-travelers wrote more vociferously than Hughes in praise of the Red revolution. A characteristic poem of the period, composed for the eighth

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convention of the Communist party in the United States, begins: "Put one more S in the U. S. A. / To make it Soviet."

IN THE Soviet Union itself, where he stayed on for almost a year, Hughes ignored clear signs of corruption and repression. Welcoming the privileges of membership in the International Union of Revolutionary Writers, he dashed off "Goodbye, Christ," a poem in which the salvific power of the church gives way to a Leninist pantheon and which would later so haunt his career as to become the centerpiece of an FBI probe. A set of essays for *Izvestia* favorably compared the Soviet justice system to the American, and in poem after poem in this period Hughes replaced a previously favorite image, the North Star of African-American freedom, with the Red Star of Soviet liberation.

It is tempting to conclude that Hughes was simply an "innocent abroad," as Arthur Koestler, a short-term traveling companion on the Soviet trip, would remember him. In Hughes's case, blindness to the Soviet charade, hardly unique among Western intellectuals of the day, sprang first from reading everything through the lens of race. But his seeming naiveté also had another source. Paid regularly and fairly well as a writer for the first time in his life, Hughes failed to grasp, or was not ready to admit, that the Soviets had good reason to reward talent that was critical of America. In any event, both in the Soviet Union and back home, Hughes's writing of the 1930's was invigorated equally by anti-Americanism and by the scramble for a dollar.

This was especially apparent in his dramatic work, from the sharp realism of *Mulatto*, to the socialist heroism of *Don't You Want to Be Free?*, to the racial sentimentality of *Little Ham* and *Way Down South* (the last a misguided venture into screenwriting). In verse, likewise, he rewrote Sandburg's maudlin "Good Morning, America" as "Good Morning, Revolution," a buoyant prophecy of international Communism, while in one of his most telling poems of the decade Hughes sounded like John Steinbeck's Tom Joad drunk on Marx:

> O, let America be America again—
> The land that never has been yet—
> And yet must be—the land where *every* man is free.
> The land that's mine—the poor man's, Indian's, Negro's, ME—
> Who made America,
> Whose sweat and blood, whose faith and pain,
> Whose hand at the foundry, whose plow in the rain,
> Must bring back our mighty dream again. . . .

EMBARRASSING THOUGH this poetry is—Hughes excluded most of his radical verse from his *Selected Poems* in 1951—it is also, as it happens, a superior instance of socialist realism in America and worthy of study for that reason alone. More important, though, Hughes's loss of artistic direction in poetry during the 1930's was balanced by his discovery of a mature voice in fiction.

The germ of Hughes's talent in this field had already appeared in a few stories of the 1920's—especially "Luani in the Jungles," a Conradian experiment about the burdens of empire—and in *Not Without Laughter* (1930), an endearing coming-of-age novel noteworthy for its incorporation of blues and vernacular. Marked by Hughes's new cultivation of polemic, the stories soon collected in *The Ways of White Folks* (1934)—several of them inspired by his tour of the South, and most now included in *Langston Hughes: Short Stories*—were damning indictments of American racism in an inventive range of settings.

A number of the stories reflect darkly upon the indulgences of the jazz age, in particular the exploitation of black talent by a white clientele. "Slave on the Block," for example, compares the cultivation of Negro primitivism in the arts to the sale of chattel in the slaveholding South, while the suffocating patronage enjoyed by a young black pianist in "The Blues I'm Playing" is a thinly disguised send-up of the neuroses and anti-Semitism of Hughes's former patron, Charlotte Mason.

As Hughes recognized, there were tragic consequences on both sides of the color line, South and North alike. "Father and Son," "Cora Unashamed," and "Home" variously dramatize the South's frenzy over interracial sexuality; in the terrifying "Red-Headed Baby," a white drifter returns to the cabin of his one-time black mistress to be shocked by a grotesquely retarded child, the result of his previous lust. By the same token, the white foster parents of a black child in New England are gradually revealed to be racists in "Poor Little Black Fellow," while "Passing" takes the form of a letter of apology written to his mother by a light-skinned young black man after he refuses to recognize her in downtown Chicago. Still other stories treat subtly the heartbreaking isolation and mental derangement brought on by racial prejudice.

To be sure, Hughes's stories are uneven—his endings tend to be tepid and unfocused, and some more resemble sketches than fully developed tales. Yet the intricate irony and sometimes stark satire which disappeared from his poetry when he became a booster for Stalin reappeared in his prose. *The Ways of White Folks*, a perfect bridge between Charles Chesnutt's turn-of-the-century tales of the color line and Richard Wright's naturalistic work soon to come, remains one of the most powerful collections in the history of the American short story.

AS AMERICA'S Red decade concluded and war came on, Hughes,

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like most blacks, devoted himself to the Allied cause. He became a member of the War Writers' Committee in 1942 and put his skills as a musical lyricist to good use by turning out homefront trivia like "Go-and-Get-the-Enemy-Blues." His short stories now took a patriotic turn, and so did most of his poems of the 1940's, while essays such as "My America" and "What the Negro Wants" fell squarely in the mainstream of the American Left, routinely anti-fascist and patriotic. Hughes had been taken aback by the Nazi-Soviet pact in 1939, yet once the Soviet Union emerged as an ally, he revived his opinion that Moscow, having "no colonies, no voteless citizens, and no Jim Crow cars," was "the world's new center."

In some respects, Hughes's new work was as much hampered by ideology as the work of the 1930's; but at its most memorable, his wartime poetry made an admirable contribution to American blacks' campaign for "double-V"—victory abroad against fascism and victory at home against segregation. The long poem "Freedom's Plow" offers a nicely textured fusion of folk culture and political protest that points toward the best literature of the civil-rights movement of the 1950's, while the title poem of *Jim Crow's Last Stand* (1943) honors Dorie Miller, a black hero at Pearl Harbor later killed in the Pacific.

In the previous year, Hughes had also become a regular columnist for the *Chicago Defender*, the black weekly, and was soon widely known for his relentless journalistic assault on the "Iron Curtains of Dixie." At the same time, he continued to produce engaging short stories, the best of which, such as "The Gun," "Who's Passing for Who?," and "His Last Affair," are grounded less in the politics of racial oppression than in its startling psychological consequences. But the most important new development of Hughes's mature career lay in a surprising vein.

Turning his longstanding interest in colloquial style toward comedy, and drawing on conversations in Harlem bars, Hughes created the fictive character Jesse B. Semple. Known eventually as "Simple" (his name puns on "just be simple"), this sarcastic raconteur accounted for more than a quarter of Hughes's weekly *Defender* columns over the next twenty years. Collected in five volumes during Hughes's lifetime, the sketches, best understood as fictional op-ed pieces, usually take the form of a dialogue between the narrator, playing the straight man, and Simple, the wise fool of Harlem; topics range from the haranguing women in Simple's life to the slow death of Jim Crow to the cold war and nuclear disarmament. Initiated as a device to encourage black patriotism at the outset of the war, Simple became over time one of the freshest vernacular creations in American culture, comparable to the achievements of Mark Twain and Will Rogers.

"The race problem in America is serious business," Hughes wrote in his preface to *Simple Stakes a Claim* (1957), but "humor is a weapon, too, of no mean value against one's foes." Running considerable risks with his readers' sensibilities—in one typical instance, Simple offers a modest proposal to build a "Game Preserve for Negroes"—Hughes in these stories took the straightening power of comedy to the maximum.

BY 1953, when he was summoned to testify before Senator Joseph McCarthy's committee, there seemed little in Hughes's writing to warrant the accusations of *Life* magazine, J. Edgar Hoover, and others that he was now—or truly ever had been—a danger to the country. Hughes's writing, though it remained often polemical on the issue of race, had clearly swung back toward the political center during the 1940's, even if his public persona was admittedly harder to specify. In his carefully orchestrated testimony before McCarthy's committee, Hughes satisfactorily accounted for the far-Left drift of his career in the 1930's, while politely demanding artistic freedom. Although he was a cooperative witness, his tightrope act left the distinct impression of a man who wished neither to defend nor to renounce his former beliefs but simply to set them aside, like an abandoned literary style.

"Politics can be the graveyard of the poet. And only poetry can be his resurrection," Hughes would later write. Without sacrificing his devotion to racial justice, Hughes in the postwar years rediscovered his artistic roots by merging the storytelling of his fiction with the lyric intensity of his early verse. In *Montage of a Dream Deferred* (1951) he assembled a kaleidoscopic set of urban images, superimposing painterly abstraction upon the rhythms of bebop, while in *Ask Your Mama* (1961) he forged a densely allusive long poem from the events of black history and the shifting styles of jazz (from Louis Armstrong to Charlie Parker to Ornette Coleman). Like Ralph Ellison's *Invisible Man*, a work of the same moment and milieu, these two books transform folk culture into a complex, lasting vision. If Hughes's art of the 1930's was often trivialized by politics, these poems, together with his best work during the Harlem Renaissance, are really Hughes at his most "revolutionary."

"HOW DOES it feel to be a problem?" W.E.B. Du Bois had asked in a haunting line in *The Souls of Black Folk*. More than 60 years later, Hughes, in "Dinner Guest: Me," feared he had found no clear answer:

> I know I am
> The Negro Problem
> Being wined and dined,
> Answering the usual questions
> That come to white mind
> Which seeks demurely
> To probe in polite way
> The why and wherewithal
> Of darkness U. S. A. . . .

In fact, though, Hughes had of-

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fered the only answers that true literature can provide. The 1960's found him at odds with the shrill art of the black-power movement—"fingerpainting in excrement," he once called it—and little of his poetry of these years lives up to his previous high standard. What will last in his writing, however, was well forecast by the retort he offered in 1933 to a Communist-party official who condemned jazz for its bourgeois decadence. "It's my music," Hughes replied, "and I wouldn't give up jazz for a world revolution."

The statement is in keeping with the enigmatic ebb and flow of political ideology throughout his career—and in keeping, too, with the complex balance in which he weighed the demands of his color and the demands of his art. If he was not Shakespeare in Harlem—Whitman in Harlem is a closer fit—it is hard to name a writer today who comes close to Langston Hughes's remarkable stylistic breadth, let alone his capacity to express the pain of inequality without losing the joy of creativity.

Music

Not the Metropolitan Opera

Terry Teachout

Christopher Keene, the general director of the New York City Opera, died of AIDS a little over a year ago, not long after conducting the opening-night performance of Paul Hindemith's *Mathis der Maler*. Keene's death came as no surprise—his illness had long been an open secret—and it would be something of an exaggeration to say that it plunged City Opera (as the company is commonly known) into a state of crisis. After all, crisis is the normal condition of any opera house, large or small, and City Opera has weathered more than its share of storms since it first raised its curtain a half-century ago.

But virtually from the moment of Keene's appointment as general director in 1989, City Opera had found itself in dire financial straits, and the board had finally forced him to give up his administrative duties in 1993, not long after he was treated for alcoholism at the Betty Ford Center. By the time of his death, City Opera had dug itself out of its financial pit, but only barely. Today, though no longer in debt, the company has no cash reserves.

In short, the death of Christopher Keene was not the cause of the opera house's troubles but merely their climax. Its effect, however, was to force everyone, from the company's board to the critics who cover its performances, to confront an awkward question: would it matter if the New York City Opera ceased to exist?

In our present age of artistic institutions, the automatic answer to any such question tends to be yes. And if it is taken for granted that all performing organizations now in existence should continue to remain so, whatever the cost, the notion that an opera company in particular might have outlived its usefulness is virtually unthinkable. Yet when it comes to the New York City Opera, many critics have long had their doubts.* Why, they ask, does New York need two companies, especially given the fact that one of them, the Metropolitan, is universally acknowledged as America's most important?

This question has been asked at increasingly frequent intervals ever since City Opera moved to Lincoln Center in 1966, thereby placing itself in direct competition with its rich and powerful next-door neighbor. It became all but unavoidable toward the end of the Keene regime,

Terry Teachout, Commentary's *music critic, writes regularly about opera for* Opera News.

* See, for example, Samuel Lipman's "Does the City Opera Have a Role?" (Commentary, January 1981).

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when the company's demoralization had become appallingly clear to audiences. And today, a year after Paul Kellogg succeeded Keene as artistic and general director, it remains central to any discussion of the future not only of the New York City Opera but of American opera altogether.

IN 1942, the city of New York acquired the Mecca Temple, a Moorish-style auditorium in midtown Manhattan. Mayor Fiorello LaGuardia had long been interested in presenting low-priced musical and theatrical performances aimed at a mass audience; finding himself in possession of a reasonably suitable theater, he promptly put together a board of prominent citizens and created the City Center of Music and Drama, Inc. Reportedly by order of the mayor himself, opera was high on the list of City Center's immediate priorities, and New York City Opera was accordingly launched in 1944 with nine performances of *Tosca*, *Carmen*, and *Martha*. The tickets were cheap (75 cents to $2), the reviews were good, and the company was on its way.

By the 60's, New York City Opera had moved away from its original incarnation as a company for the people, presenting traditional stagings of familiar works. Ticket prices did remain comparatively low, but under Julius Rudel, who served as general director from 1957 to 1979, City Opera developed a more individual artistic profile, sharply distinguished in almost every aspect from that of the Metropolitan Opera. Unable to afford established singers, the company instead looked to younger artists, many of whom were American and not a few of whom—most notably June Anderson, Placido Domingo, Sherrill Milnes, Samuel Ramey, Tatiana Troyanos, and Carol Vaness—later went on to major careers at the Met and elsewhere. And at a time when the theatrical (as distinct from the musical) quality of the Met's productions was abysmally low, City Opera became known—if not notorious—for its imaginative stagings.

Most important of all, City Opera devoted an increasingly large share of its performances to 20th-century works, none of which was then in the Met's repertory. Three-quarters of the operas introduced by Rudel were composed after 1900, and a substantial number of these were by American composers. Although half did not survive more than a single season, it was no exaggeration for Martin L. Sokol, the company's historian, to write that Rudel's commitment to American opera "injected new life into the medium, and transformed a dying art into a living one."

BUT IN turning City Opera into a genuinely American company, Rudel also laid the groundwork for his eventual dismissal. Many of the contemporary operas he presented were box-office flops, and the company's popularity during the 60's and 70's was due in dangerously large part to the fact that it had a monopoly on the services of one singer with an international reputation. This was the soprano Beverly Sills, who joined City Opera in 1955 and sang with it regularly for the remainder of her performing career.

Another factor in the company's changing fortunes was its 1966 move to Lincoln Center. Its new home, the 2,700-seat New York State Theater, had been specifically designed by Philip Johnson for performances by George Balanchine's New York City Ballet, and it proved unsuitable for operatic performance; not only were the acoustics bad, but the vastly larger stage opening compelled a grand-opera approach to production—something the chronically underfunded company could ill afford. Worst of all, City Opera's new physical proximity to the Met, which itself moved to Lincoln Center seven months later, made direct comparisons between the two houses unavoidable, a problem that would grow more acute in later years.

In 1979, the board forced Rudel to resign as general director, and Beverly Sills, by then one of the best-known classical musicians in America, replaced him. Under Sills, who made no secret of her populist inclinations, the company backed away from its commitment to 20th-century work, though it did continue occasionally to produce new American operas. In 1984, it launched a regular season of musical comedy (a form for which the State Theater is even less well-suited), and became the first company in America to use English-language titles.

WHICH BRINGS us to the age of Christopher Keene. A protégé of the composer Gian Carlo Menotti, Keene had been City Opera's music director for six years before succeeding Sills in 1989. Unlike her, he was deeply committed to contemporary opera, but the new works he chose were generally of little or no musical interest, and instead of the many attractive American operas by older composers that had once figured prominently in the repertory, Keene favored such weighty German-language works as Ferruccio Busoni's *Doktor Faust* (1925), Arnold Schoenberg's *Moses und Aron* (1932), and Bernd Alois Zimmermann's *Die Soldaten* (1964), none of which appealed to mainstream New York operagoers.

Perhaps the best way to sum up Keene's musical inclinations is to say that he was irresistibly attracted to large-scale undertakings, a fatal taste in the general director of an opera house suffering from chronic deficits. Nor was his interest in the grandiose solely musical: Keene also launched the "Freedom Cycle," a disastrous series of productions of 20th-century operas on political themes. With Stewart Wallace's *Harvey Milk* (produced in 1995) and Jost Meier's *The Dreyfus Affair* (produced last spring, after Keene's death), City Opera played an im-

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portant role in the politicization of opera in America—and sank to an artistic nadir.* During the latter stages of Keene's illness, the company's musical standards, especially the playing of its pit orchestra, deteriorated to a shocking degree.

THE HIRING last January of Paul Kellogg was widely seen as an official repudiation of Christopher Keene's institutional priorities. Kellogg is the first general director not to have had a performing career, and his musical tastes are in every way different from Keene's. "I don't think we'll be seeing many German expressionists at City Opera anymore," he told one newspaper reporter shortly before the beginning of the current season. He went on to say:

> I certainly don't intend to stop doing the popular operas. They sell, and for a reason—they're *good*. But I also want to do older operas that have been overlooked: Handel, Rossini, Gluck. And some of the European composers of the 19th and early 20th centuries whose work isn't done regularly in this country—Smetana and Janáček, for example. And American opera, too. . . .

New York audiences got their first taste of the new City Opera this past October, when the company mounted a production of Benjamin Britten's *The Turn of the Screw* (1954) that had been originally presented by Glimmerglass Opera, a highly successful summer company in Cooperstown, New York which is also run by Kellogg. The results were impressive. Staged by Mark Lamos, who later this season will be directing the Metropolitan Opera's new production of Alban Berg's *Wozzeck*, the new *Turn of the Screw* was both theatrically and musically compelling, and featured a remarkable performance by the American soprano Lauren Flanigan.

But any attempt to repair City Opera's artistic fortunes must inevitably be measured against the golden yardstick of the Met—which, under James Levine, has changed its own objectives considerably. Though the Met's style remains for the most part solidly conservative, its new productions and revivals are now usually staged with careful attention to theatrical values. And even though American opera barely exists at the Met, Levine made 20th-century opera by European composers a regular part of the repertory; this season, the company is performing not only *Wozzeck* (1921) but also Britten's *Billy Budd* (1951) and *A Midsummer Night's Dream* (1962). The introduction last season of Met Titles has proved immensely popular with audiences, and the Met now seeks, through a Young Artists Program, to train its own new singers rather than looking to other companies (including City Opera) to discover and develop the stars of the future.

These innovations have made it considerably more difficult for City Opera to differentiate itself. Were it based in a more intimate theater—on the same scale as, say, the 920-seat Glimmerglass house—it would no doubt find it far easier to present unusual repertory, staged with theatrical flair. But for the foreseeable future City Opera is committed to the New York State Theater. Though the hall has just undergone acoustic renovations that have greatly improved the sound, no renovation can change its basic design or make it better suited to the artistic purposes of a company which will never be able to raise the kind of money for new productions that the Met spends as a matter of course.

IN THE end, it may turn out that City Opera was doomed from the moment it moved to Lincoln Center. But in the shorter run, Kellogg has already succeeded in reminding us why the New York City Opera does, indeed, deserve to exist: at its not-infrequent best, it has suggested to operagoers what a truly American repertory might look and sound like. That repertory includes such musically accessible and demonstrably stageworthy works as Virgil Thomson's *Four Saints in Three Acts* (1928) and *The Mother of Us All* (1947), Gian Carlo Menotti's *The Medium* (1947) and *The Consul* (1950), Marc Blitzstein's *Regina* (1949), Aaron Copland's *The Tender Land* (1954), Carlisle Floyd's *Susannah* (1955) and *Of Mice and Men* (1970), Leonard Bernstein's *Candide* (1956), Douglas Moore's *The Ballad of Baby Doe* (1956), Robert Ward's *The Crucible* (1961), and Jack Beeson's *Lizzie Borden* (1965). Significantly, all but the first two have been produced at one time or another by City Opera, and Kellogg has already announced plans to revive several of them in coming seasons. By contrast, and no less significantly, none has yet been produced by the Met.

In a very real sense, the fundamental difference between the Met and City Opera is the difference between opera *in* America and American opera, the latter created by American composers for American performers and audiences. If New York, the musical capital of the United States, is incapable of supporting a second company committed to the theatrically serious presentation of works like these, staged and sung by native artists, then it is hard to see any hope whatsoever for the long-term future of American opera.

* For a discussion of the first of these operas, see my article, "Harvey Milk, Etc." (COMMENTARY, July 1995).

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Books in Review

911

Body Count:
Moral Poverty . . . and How to Win America's War Against Crime and Drugs
by William J. Bennett, John J. DiIulio, Jr., and John P. Walters
Simon & Schuster. 271 pp. $24.00

Fixing Broken Windows:
Restoring Order and Reducing Crime in Our Communities
by George L. Kelling and Catherine M. Coles
Free Press. 319 pp. $25.00

Reviewed by
Gary Rosen

As his seventeenth birthday approached early this year, Michael LaSane of Berkeley Township, New Jersey, decided to give himself a present: a new Toyota Camry. Finding just the one he wanted in the parking lot of a neighborhood shopping center, he forced its owner—a forty-five-year-old teacher, wife, and mother by the name of Kathleen Weinstein—to drive with him to a nearby wooded area. On a tape-recording that Weinstein managed clandestinely to make of her abduction, she can be heard pleading for her release and trying to persuade the teenager that it was not too late to reconsider. LaSane, unmoved, can also be heard, querying Weinstein about the car's service record and lease arrangements. Minutes later, he tied her up and smothered her to death.

Such tales of cold, unprovoked brutality are common fare in news reports these days, especially in our major urban areas, and go a long way toward explaining why violent crime continues to weigh so heavily on the American mind. Unfortunately, the problem is every bit as pervasive as the sensational and widely reported misdeeds suggest. Since the mid-1980's, and notwithstanding the recent and much-ballyhooed dip in crime nationwide, young men between the ages of fourteen and twenty-four have committed murder and mayhem at an ever increasing rate, accounting for a wildly disproportionate share of the violence in our streets. What is more, this age group will expand in both relative and absolute size in the years ahead; many more Michael LaSanes appear to be on the way.

Both *Body Count* and *Fixing Broken Windows* aim to avert this fearsome possibility by recasting the terms of public debate. Though the books differ in scope—the first provides an overview of recent national efforts against crime, while the latter focuses more narrowly on policing strategies—their authors agree on one essential matter: crime is a cultural and moral problem with cultural and moral solutions. Recognizing this, they insist, is the necessary prelude to any serious discussion of anti-crime policy—about which they have many useful, and sometimes provocative, things to say.

The three authors of *Body Count* bring impressive credentials to their task. Among his other accomplishments in public life, William J. Bennett headed the Office of National Drug Control Policy under George Bush. He was assisted there by John

Gary Rosen *is senior editor of the Manhattan Institute's* City Journal.

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P. Walters, who is now executive director of the Council on Crime in America. John J. DiIulio, Jr., who has written widely on crime-related issues, teaches at Princeton and heads the Brookings Institution's Center for Public Management.

Body Count paints a sobering picture of where things stand now. Although the murder rate dropped this year to 8 per 100,000 citizens, this is still at the top end of the scale historically: in the mid-1960's, the rate hovered around 5 per 100,000 and then began a rapid ascent, standing at 9.5 in 1993. Those responsible for the violence are not only younger than their counterparts of an earlier era, they are also considerably more energetic and vicious: according to Bennett, DiIulio, and Walters, today's "baddest boys" may be responsible for *three times* as much "serious harm and gratuitous violence" as those of yesteryear. In Florida alone, where the juvenile proportion of the population declined from 31 to 23 percent over the past two-and-a-half decades, the percentage of juveniles among those arrested for robbery increased from 19 to 32.5, for rape from 10 to 16.2, and for murder from 5.3 to 16.2.

DiIulio has elsewhere dubbed this new breed of young offenders "super-predators." The animal imagery is apt, but only up to a point. Impulsive and remorseless, fearing neither "the stigma of arrest, the pains of imprisonment, [nor] the pangs of conscience," these young criminals do indeed seem at times like a species apart. Yet, as the authors of *Body Count* recognize, they are also the product of distinctively human failings. What unites the super-predators is not merely that they come overwhelmingly from poor and minority neighborhoods, but that so many of these neighborhoods have seen the nearly complete disintegration of the institutions that make for decent character. Often abused or neglected, increasingly born out of wedlock, these young people have grown up without the guidance of "loving, caring, responsible adults" willing to teach them the difference between right and wrong. In short, they suffer from a condition the authors fittingly define as "moral poverty."

In contending with such depraved youngsters, society's first order of business, according to Bennett, DiIulio, and Walters, must be self-defense, and here they document the ongoing failure of our criminal-justice system to keep even the worst offenders off the streets. Those convicted of a violent felony serve, on average, less than half their sentences, and almost two thirds of such malefactors are on the streets at any given time, either on probation or on parole. *Body Count*'s solution to such "revolving-door" justice is straightforward: longer effective sentences, stricter supervision of offenders released back into the community, and (most importantly) raising the revenues to pay for these needed reforms.

This is not, however, just a rehash of familiar "get-tough" policies. Rather, the aim of the authors—who reject such conservative staples as reinstituting chain gangs and stripping prisons of all amenities—is moral accountability. Stern, reliable punishment sends a "socializing, civilizing message," they write, while its absence represents yet another instance of adults abdicating their responsibility for guiding the wayward young.

Bennett, DiIulio, and Walters would also like to see a wider campaign waged against crime, and it is one that will not sit well with civil libertarians and others on the Left. They are especially keen on reviving the vigorous—and, they show, remarkably successful—anti-drug strategy of the 1980's, with a renewed emphasis on interdiction and on stigmatizing illegal drug use among teens (who have returned to drugs in alarming numbers of late). They have little but scorn for those

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who consider drug use a personal or health matter, best regulated without criminal sanction, rather than a profound question of character that touches us all.

Perhaps surprisingly, the authors of *Body Count* are concerned not only about the corrupting influence of drugs in inner-city neighborhoods but about alcohol as well. They recommend the use of zoning laws to break up high concentrations of liquor stores and bars, and strict limits on alcohol advertising. "Where broken bottles fill the gutters," they write, "social bonds are weakened and social capital goes down the drain." If consistency is one test of moral seriousness, Bennett, DiIulio, and Walters pass with flying colors.

GEORGE L. KELLING writes with similar seriousness about the steps that a community may legitimately take against the deviance of some of its members. The "dean of America's policing scholars," as the authors of *Body Count* call him, Kelling collaborated with James Q. Wilson in 1982 on "Broken Windows," an influential article that laid out the then-little-noted relationship between public disorder—like vandalism—and serious crime. Now, in *Fixing Broken Windows*, written together with the lawyer and anthropologist Catherine M. Coles, he describes recent efforts to reestablish norms of civility and law-abidingness in our most troubled urban areas.

Two key insights inform the sort of preventive, community policing that Kelling and Coles advocate. First, citizens are less troubled day to day by the prospect of serious crime than by such highly visible minor threats as aggressive panhandling, public drunkenness, low-level drug dealing, and noisy commotions. Second, such seemingly petty offenses are directly related to more serious ones: those who commit them are often violent felons themselves, and when their lesser infractions are ignored, it suggests a general lack of concern on the part of the community and thus invites major infractions.

The most celebrated testing ground of these ideas has been New York City. Efforts to curb public disorder began there in the mid-1980's but did not come to a head until the appointment in 1990 of William J. Bratton (with whom Kelling has been closely associated) to lead the Metropolitan Transit Authority police. Using newly won legal authority to ban panhandling in the subways, and focusing on ejecting disorderly riders and apprehending fare-beaters—a large number of whom, it turned out, were carrying illegal weapons or had outstanding felony warrants—Bratton brought the felony rate down by 75 percent, a decline Kelling and Coles report as "unparalleled in the crime-control literature."

The effectiveness of these strategies was demonstrated again when Bratton took over the New York police department in early 1994. Zeroing in on "quality-of-life" crimes—the unsolicited "squeegeeing" of car windshields, petty drug trafficking, public drinking and urination—and giving new authority to precinct commanders, he produced immediate results. By the end of 1995, New Yorkers were less likely to be robbed or murdered than at any time since the early 1970's.

Predictably, civil libertarians have been the strongest opponents of the kind of measures employed by Bratton. Among the early setbacks for New York's Transit Authority was a ruling by the federal district court—eventually overturned—that protected begging in the subways as a form of free speech. Yet Kelling and Coles bring encouraging news: cities like San Francisco and Seattle have been able to prevail against such court challenges by crafting their laws narrowly and enforcing them with care.

A much more unexpected source of resistance to community policing has been police departments themselves. For decades, as Kelling and Coles relate in detail, American police have increasingly operated under a model that emphasizes responding to crime rather than preventing it. This has led to the rise of so-called "911" policing and the redeployment of patrolmen from neighborhood beats to radio-dispatched cars.

These practices were meant to make police more "professional" and less prone to corruption and bribery, but they have also tended to keep officers at a distance from the wider criminal population and, worse, to make them strangers in the eyes of the public at large. Now police in many localities are once again being stationed in the community, where they can get to know the law-abiding majority and help them to establish and maintain strong standards of public behavior.

THE AUTHORS of *Body Count* and *Fixing Broken Windows* know, of course, that changing our laws and adopting new police strategies can only do so much to restrain the worst among us. Lasting progress against the new class of ferocious street criminal will come primarily from the work done in our families and churches, schools and neighborhood associations. Still, public policy can set the tone. It can help to create, in the words of Bennett, DiIulio, and Walters,

> a climate that would make it easier rather than harder for all of us to grow more civilized; easier rather than harder for us to keep our commitments to one another; easier rather than harder for us to recapture the idea of personal and civic responsibility.

For those who invariably place the rights of individuals above the claims of the community, such talk might seem an open invitation to intolerance and vigilantism. But anyone who truly cares about civil liberties would draw just the opposite conclusion. For unless we manage on our own to set the limits of ac-

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ceptable public behavior, using the gentle power of opinion and mores, we will only bring closer the day when we feel compelled to ask government to take up its far harsher tools and do the job for us.

Beyond the Pale

Small Worlds
by Allen Hoffman
Abbeville Press. 279 pp. $24.95

Reviewed by
David G. Roskies

Back in the early 1950's, when the late Irving Howe set out to compile *A Treasury of Yiddish Stories*, he eliminated from contention almost everything written in Yiddish about the New World. If, Howe reasoned, American-born readers were looking for slices of urban life, or the panoramic sweep of their own social landscape, they had access to the "real thing"—to Dreiser, Fitzgerald, Hemingway, Dos Passos, Faulkner. Rather, what Howe saw as unique to Yiddish fiction was the life-and-death struggle of the *shtetl*, the self-regulating, culturally autonomous, and historically vulnerable Jewish community of the Old World. In the wake of that community's final destruction in World War II, the Yiddish literature he (together with his collaborator Eliezer Greenberg) was bringing into English would provide a lasting, and loving, memorial.

Howe did not live to see a surprising fruit of his labor: in the last decade of the 20th century, a group of American-born Jewish writers has begun to reclaim that same *shtetl* for their own fictional purposes. But unlike their Yiddish literary forebears, who actually lived the experiences they described, these third- and fourth-generation American-Jewish writers have little more to go by than the Howe and Greenberg *Treasury*, plus some Sholem Aleichem and I.B. Singer translated into English or transformed into the fare of movies and musicals.

I wonder what a generation of Yiddish readers with access to *their* real thing would have made of these recent inventions. For starters, they would have had a good laugh at Melvin Jules Bukiet's *Stories of an Imaginary Childhood* (1992), in which the Jewish homes of Proszowice sport electric doorbells and (in violation of Jewish law and custom) little boys wear prayer shawls in *shul* and are forced to study the violin with a female teacher. They certainly would be amused by Rebecca Goldstein's equally improbable town of "Shluftchev [i.e., Sleepyville], Galicia," a veritable hotbed of feminism, where a great deal of singing goes on and with a little bit of *Mazel* (1995) you can make it to America. And they would have a good chuckle over Steve Stern's transplanted *shtetl* on the Mississippi and the zany antics of *A Plague of Dreamers* (1994).

This is hardly to say that the Old World *shtetl* was never used by Yiddish writers themselves for legitimately comic and even subversive purposes. Quite apart from the work of the 19th-century masters like Mendele Mokher Seforim and Sholem Aleichem himself, we have the example of the once-popular storyteller Isaac Meir Dik (1814-93), who had the mind-boggling effrontery to stage a *shtetl* farce on Tisha B'Av, the solemn midsummer fast day that commemorates the destruction of the ancient Temple in Jerusalem. Dik, an early promoter

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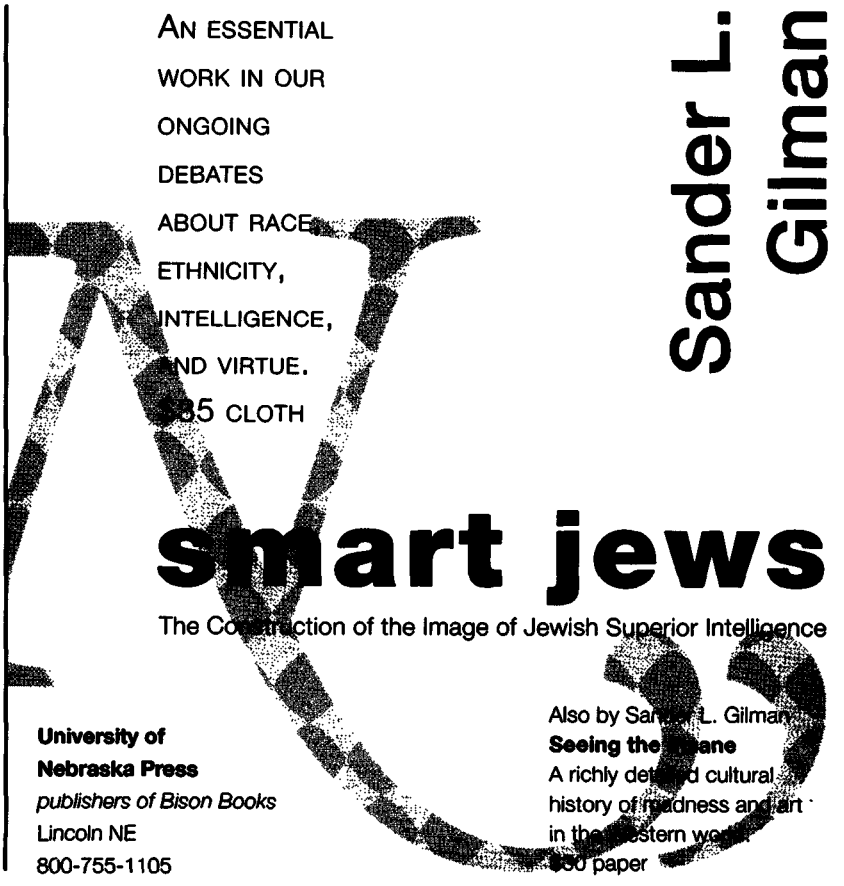
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of mass immigration to America, would have been tickled pink to make the acquaintance of Allen Hoffman, an American-born Jew who has now chosen to revisit a mock, make-believe *shtetl* on that same, somber day.

WHEN HIS first published story, "Building Blocks," appeared in COMMENTARY in May 1974, Allen Hoffman was introduced to readers as "a young Orthodox rabbi who lives in New York." Breaking with the avowed secularism both of the Yiddish masters and of their American-born offspring, Hoffman boldly probed the role of religion in modern life by setting his tales at the traditional nexus of Jewish time and place, which is to say, in a synagogue or hasidic *shtibl* (prayerhouse) during one or another feast or fast day. In *Small Worlds*, his first novel, Hoffman, who has since moved with his family to Israel, does something similar.

In particular, he puts a long-standing rule of *shtetl* fiction to very good use. A Yiddish author wishing to zero in on the crisis of faith in traditional society would center the plot not in the marketplace, where the collapse of the medieval economy was visible for all to see; not in the community council room, where the Jewish power elite laid its nefarious plans; not in the main synagogue, where no one of consequence prayed anyway; but in the *beis medresh*, the house of study. Here is where all the serious learning, praying, and politicking transpired.

So it is in *Small Worlds*. The place is Krimsk, a border town somewhere in the Polish part of the Pale of Settlement. The year is 1903, in the aftermath of the infamous Kishinev pogrom. And the cast of stock characters is as follows: a *rebbe* who, as in a hasidic family saga by I. L. Peretz, Joseph Opatoshu, Sholem Asch, or I. J. Singer, has just emerged after five years of seclusion; his highstrung wife; a marriageable only daughter; two possible suitors; a brilliant young Talmud student plagued with religious doubts; a drayman who communes with his horse; a Gentile witch; a magic frog; a young revolutionary; a band of unruly schoolboys; some passionate women; the crazy and the lame.

What turns this motley of types into a coherent community is religious passion. For, like ancient Jerusalem on Tisha B'Av, Krimsk is under siege, as much from within as from without. Although the entire male Jewish population of the town has assembled in the Krimsker *rebbe*'s *beis medresh* to recite the Dirges and the Book of Lamentations while sitting on overturned benches, the workaday world has not been entirely suspended on this fast day, and there is room for the secular and sacred not only to coexist, but to clash.

WITHOUT DIVULGING more of the plot, let me just say that Allen Hoffman tells a great story, and that Krimsk, despite the doom and gloom of Tisha B'Av itself, and despite the ominous atmosphere of impending pogrom, is a wild place, reminiscent of nothing so much as a religiously intense version of Gabriel Garcia Marquez's imaginary village of Macondo in *One Hundred Years of Solitude*. But what I really want to point to is something else: namely, Hoffman's intellectual and imaginative command of his material.

Here, probably for the first time in American-Jewish letters, the study of Talmud comes alive—both its legal and ethical disputation, wonderfully dramatized by Hoffman, and its supernatural lore. Here, when characters violate Jewish law (as when the *rebbe* has ecstatic sex with his wife on the fast day), it is not because the author is ignorant of the rules that *shtetl* Jews live by, but precisely because, knowing them, he means to push the limits of sanctity and observable reality alike.

In short, the *shtetl*, rendered by means of magic realism and drenched in Jewish knowledge, is here shown to be a worthy fictional landscape. Not only that, it is a landscape with a traditional Jewish moral. As in the *shtetl* stories of I. B. Singer, the Jewish inhabitants of Krimsk routinely consult the Gentile witch Grannie Zara (whose name is a pun on *avodah zarah*, Hebrew for "idolatry"). In the end, however, Hoffman casts his ballot not with Singer's nihilism but with a species of Zionism: the Jews of Krimsk manage to exorcise the dual demons of witchcraft and of Marx, the latter represented by an ardent young revolutionary named Grisha, and are led to the Promised Land—of America—by the messianic fervor of their somewhat anarchic *rebbe*.

STILL, FOR all that Hoffman gets it right, there is something missing. That something has not to do with the few lamentable bloopers in the book (one character reads about "thousands and thousands of Jews" murdered in the Kishinev pogrom, which actually claimed 49 lives and was hardly reported at all in the heavily censored Yiddish press, while another, Grisha, the Yiddish-speaking Bolshevik, would have been a virtual impossibility in 1903, when the vast majority of *shtetl* leftists belonged either to the Jewish Labor Bund or the Socialist Revolutionaries). It has to do, rather, with the way, in Jewish history, reality itself always seems to outstrip and defeat realism, magic or otherwise.

Thus, although Hoffman knows that rabbis, in an effort to mandate spiritual denial, exempted schoolboys from the study of Torah on Tisha B'Av, and that boys regularly exploited this freedom by having a good time, what he may not know is that in the *shtetl*, Jewish schoolchildren ran around all day throwing burrs at Jewish adults. In many ways, this particular response to catastrophe is far more mysterious and psychologically complicated than any of the strange and sometimes hilarious practices Hoffman invents out

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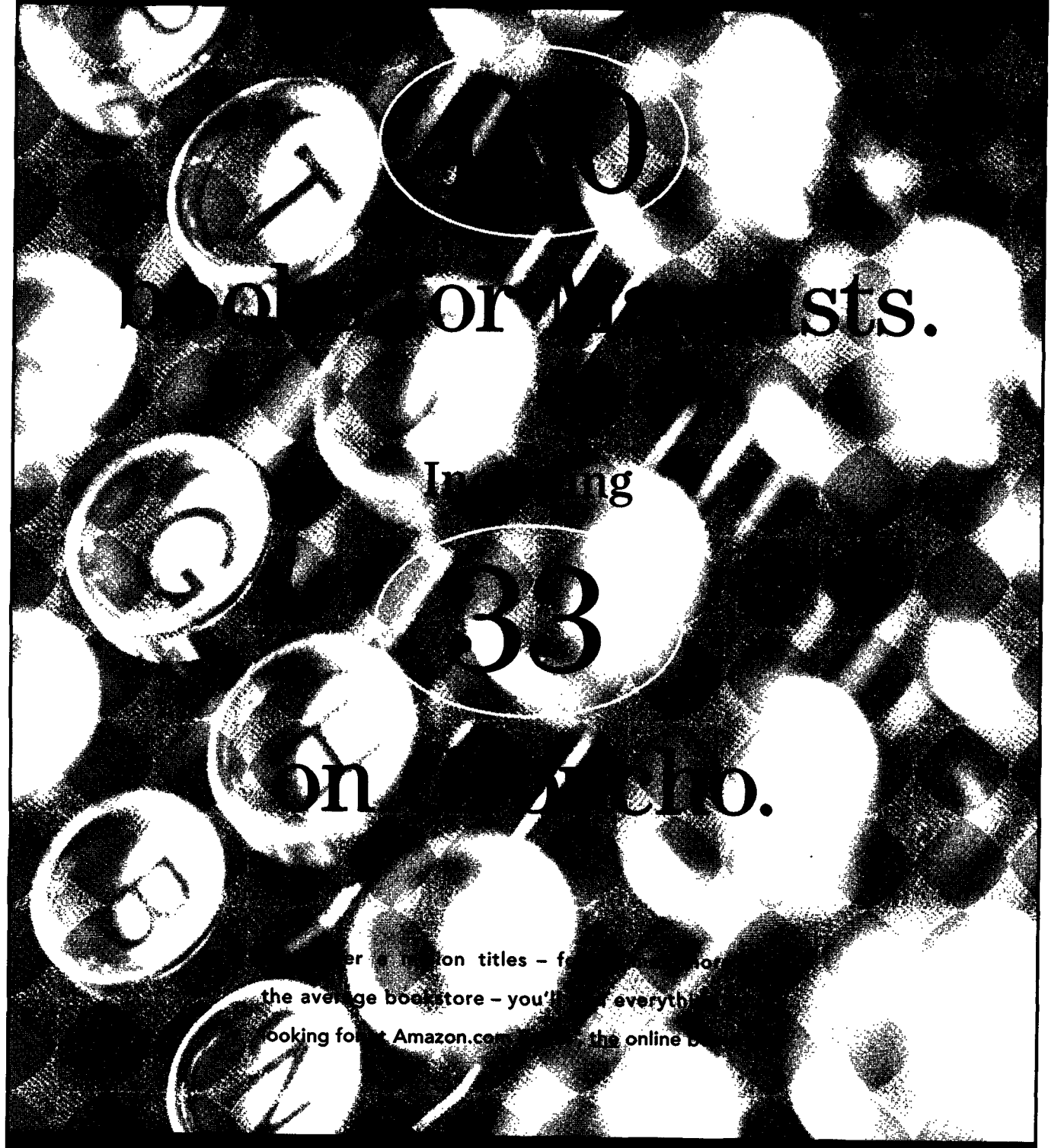

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of his marvelously well-stocked imagination.

But that, perhaps, is a sermon for another day. According to the jacket copy of *Small Worlds*, Allen Hoffman has set out to reclaim the *shtetl* as a covenantal community, and this volume is "the first in a series of novels following the people of Krimsk and their descendants in America, Russia, Poland, and Israel." Krimsk, in other words, is a "small world" that contains within itself the seeds of its own redemption. I wish him well, in the name of all those Yiddish readers who did not live to see this day. Who knows? Perhaps the publication of *Small Worlds* also marks the rebirth of the American-Jewish novelist—not as modernist mandarin but as a chronicler, as a teller of familiar tales, and even as a serious student of Jewish law and lore.

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Forbidden Knowledge: From Prometheus to Pornography
by Roger Shattuck
St. Martin's. 369 pp. $26.95

Reviewed by
J. Bottum

ROGER SHATTUCK has led a distinguished career as a critic of literature and French culture, winning a National Book Award in 1975 with his biography, *Marcel Proust*, and receiving wide notice in 1980 for *The Forbidden Experiment*, an account of a feral child discovered in France in 1800. Since 1988 he has taught at Boston University, and he also serves as president of the Association of Literary Scholars and Critics, a professional organization recently established as a counter to the highly politicized Modern Language Association. In his latest work, he conducts a tour of the literary and cultural horizon of the sort that can only be undertaken by one who has devoted a lifetime to serious reading and thought.

Forbidden Knowledge opens with a question: "Are there things we should *not* know?" People once thought so, Shattuck approvingly declares, citing not only such proverbs as "Curiosity killed the cat" but the story of the Garden of Eden, the legend of Oedipus, and the myth of Pandora: warnings, all, against that magpie inquisitiveness St. Augustine called the "lust of the eyes." In what follows, Shattuck first traces, through literary examples, the destruction of the idea that there are things we ought not know; and then, through artistic and scientific "case studies," he presents a philosophical justification for reintroducing that idea into contemporary life.

IT WAS John Milton, Shattuck argues, who at the dawn of modernity sounded the clearest warning against testing the limits of curiosity; in *Paradise Lost* (1667), the story of Satan's fall lays bare the sinful pride—the conceit that one can usurp God's place—that lies hidden behind the seeking of knowledge. Very quickly thereafter, however, European literature seems to have lost sight of Milton's lesson.

In common with many contemporary literary critics, Shattuck reads Goethe's *Faust* (1808) as an anti-*Paradise Lost*, and the self-creating figure of Faust himself as a morally rehabilitated Satan. Although this brand of Enlightenment optimism did not go unchallenged—works like Mary Shelley's *Frankenstein* (1818) and Robert Louis Stevenson's *Dr. Jekyll and Mr. Hyde* (1886) continued to maintain the old Miltonic view—it was Goethe who at last emerged victorious. By the end of the 19th century, Shattuck writes, the dominant picture of the self had become the Faustian one: man as the knowing and heroic master of a godless universe.

Thus far, which is about halfway through *Forbidden Knowledge*, Shattuck concentrates on literary history and analysis. It is by far the stronger part of the book. The second half, with its artistic and scientific case studies, and its attempt to refine a set of principles in support of a contemporary proscription of some knowledge, is less successful. Although Shattuck's philosophical analysis proves devastating when he applies it to pornography, it becomes increasingly less wieldy as he tries to wring from it support for a ban on racial eugenics, the atom bomb, recombinant DNA, and the human genome project.

THE ROOT of the problem lies, I think, in Shattuck's consistent slighting of religion and his apparent inability to perceive that some theological notion of the sacred is necessary to undergird the idea that there are things we ought not know. The consequences of his religious tone-deafness are discernible even when it comes to literary analysis. His otherwise perceptive reading of Emily Dickinson, for example, is hurt by his failure to notice that her poems praising reticence and abstinence are dominated by religious imagery, just as his reading of Herman Melville's *Billy Budd* is damaged by a failure to connect the weakening awareness of forbidden knowledge in the 19th century to the weakening purchase of religious language on the reading public.

But the real problems arise when he moves from literary analysis to philosophy. Lacking the theological support his own study of Milton suggests he needs, Shattuck attempts to place limits on knowledge by relying solely on a nonreligious moral intuition that there *ought to be* such limits. Immanuel Kant went down this road, and it is perhaps not sur-

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prising that Shattuck ends up with an analysis very much like Kant's—arguing that we can discern whether a piece of knowledge is forbidden by examining the will of the person seeking it.

We cross the limits of allowed investigation, Shattuck claims, when we seek knowledge merely for the sake of violating the prohibition against it. This he calls the "Wife of Bath effect," after the hoydenish character in Chaucer's *Canterbury Tales* who declares, "Forbid us a thing, and that is what we desire." Pandora opening her husband's box because she has been warned not to, Oedipus seeking the cause of the city's plague out of irritation with the warnings of Tiresias against trying to do just that, are examples of this syndrome, which Shattuck calls both perverse and self-contradictory. For, as he points out in his demolition of the Marquis de Sade, pornography *requires* the existence of moral prohibitions in order to achieve the sexual satisfaction of violating them.

So far, perhaps, so good; but the atom bomb and the human genome project offer difficulties of a much more intractable sort. Here, Shattuck posits a second principle, which he calls the "fog of uncertainty" or the "veil of ignorance." There is, he argues, a perpetual and unbridgeable gap between our pure, unfocused wanting-to-know and *what* we want to know. ("If I can think of it, it isn't what I want," said the poet Randall Jarrell.) Since by definition there must always be things that lie beyond our knowledge, the effort to know them is, once again, both perverse and (by definition) self-contradictory. Therefore, we ought not try.

IF THINGS have begun to seem murky by now, that is because they are. The problem is that, to the question, "Are there things we should *not* know?," no purely philosophical answer is ever going to suffice. Indeed, the question itself is philosophically incoherent. There are certainly acts we should not perform—on that we can all agree—and sometimes the acquisition of knowledge may require performing those acts. But how can the possession of knowledge itself be called such an act? When the physicist Edward Teller, in irritation with doubts about atomic research, declared, "There is no case where ignorance should be preferred to knowledge, especially if the knowledge is terrible," he was only putting in a strong way a thought that has considerable truth to it: facts themselves are responsible neither for the use we make of them nor for what we did to find them out.

Behind this problem lurks another, identified long ago by Plato in the *Meno*: how do we know which things we should not know? Perhaps a careful scientist (or artist) can discern enough about a line of investigation to guess, before it is too late, that only evil will come of knowing the end result; perhaps not. But in either case the moral intuition that some knowledge ought to be forbidden is not easily reconciled with the philosophical intuition that we can never know sufficiently in advance which knowledge that might be. Like the myth of Pandora, the story of Adam and Eve cannot tell us how to avoid unwelcome knowledge; only that such unwelcome knowledge has already entered the world, and why.

If, in asking his question, Shattuck meant merely to ask whether life is better lived with a little modesty about the intellectual, moral, and psychological capacity of human beings in general and oneself in particular, then obviously he would be right to answer yes: in that sense, there are things we should not know. If he meant to ask whether we ought to think long and hard about the probable uses of new understandings before we go out and get them—recognizing that the puta-

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tive good of abstract knowledge weighs very little against any concrete harm, and that when in doubt we must refrain from acting—then again he would be right to answer yes. But if he meant to ask the truly philosophical question of whether there are things we really *should not know*, then, on purely philosophical grounds, he would be wrong: the answer is simply no.

Without a notion of the sacred—without, to put it bluntly, some direct reference to God—I see no way past this problem. What, then, apart from urging scientists and artists to cultivate the virtue of prudence, would we have them, or ourselves, do? The beginning of wisdom may lie in taking seriously the fact that every attempt to articulate a concept of forbidden knowledge has eventually been compelled to use a theological vocabulary. Part of what it means to seek a moral understanding of knowledge is to believe, finally, in the unity of truth—which is to say, in an underlying, God-given structure that makes what is intelligible and true also good. But part of what it means is also to acknowledge that we live in a fallen world—which is to say, there is no good we can entirely trust either ourselves or anyone else to refrain from turning to evil. The trick is to hold on to both these understandings at once; it is a pity that Roger Shattuck, out of inability or unwillingness to embrace the first, should be left unequipped to defend the second as forcefully or as persuasively as he surely intended to do.

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Out of Africa

The Open Sore of a Continent: A Personal Narrative of the Nigerian Crisis
by Wole Soyinka
Oxford. 170 pp. $19.95

Reviewed by
Peter L. Berger

THIS BOOK, by the Nigerian playwright who won the Nobel Prize for Literature in 1986, is a cry of the heart. Based on three lectures given by Wole Soyinka at Harvard, *The Open Sore of a Continent* is neither particularly well-organized nor even well-written; but its anguish—or rather, its very great anger—is palpable, and easy to sympathize with.

The greater part of the book consists of a passionate denunciation of the present Nigerian regime, led by Sani Abacha, which came into power after the annulment of the elections of 1993 and the imprisonment of the man who won them. But Nigeria's plunge into autocracy and brutality hardly began with the new military government. Soyinka reflects here on the entire history of his country since independence from Great Britain in 1960, a history which in many ways is paradigmatic of sub-Saharan Africa in general.

As Soyinka tells it, Nigeria exemplifies both the highest hopes and the worst disappointments of African nationhood. The largest African country, with a population exceeding 90 million, it covers a vast territory and harbors rich natural resources, including huge oil reserves. When it emerged from British colonial rule, there was every reason to think it would not only become an economic success but assume the leadership of black Africa.

That was not to be. Like other British ex-colonies, Nigeria was launched with the institutional accouterments of Westminster-style democracy, a judiciary trained in the common-law tradition, and a fair-sized educated middle class. But again in a pattern characteristic of all the new African states, Nigeria's borders, drawn when the European powers were carving up the continent among themselves, bore little relation to the sociological realities on the ground. In particular, Nigeria contains a multiplicity of ethnic groups with little in common, and religiously it is split about evenly between Muslims in the north and Christians in the south, with a strong admixture of indigenous African religions.

Creating a nation out of all this diversity would have been no small task under the best of circumstances. In the event, independent Nigeria has witnessed a seemingly endless cycle of democratic beginnings followed by military dictatorships, pervasive inefficiency and corruption, and persistent ethnic and religious animosity. The bloodiest phase was the civil war occasioned by the attempted secession of eastern Nige-

PETER L. BERGER, *University Professor at Boston University, is the author, among other books, of* Pyramids of Sacrifice, The Capitalist Revolution, *and, most recently,* A Far Glory.

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ria in 1967 to form the independent state of Biafra. That secession was crushed with great cruelty, as similar secessions have been and are still being crushed in other parts of Africa (Soyinka repeatedly invokes the struggle in southern Sudan).

No more graphic emblem of the current state of affairs in Nigeria can be imagined than the event with which this book concludes: the execution of the civil-rights activist Ken Saro-Wiwa and eight of his colleagues from the Ogoni ethnic group in November 1995. According to Soyinka, the execution was so botched that Saro-Wiwa had to be hanged three or four times before he finally died. His last words on the scaffold are reported to have been: "Why are you people doing this to me? What sort of nation is this?"

"WHAT SORT of nation is this?" That is also Soyinka's question. And he goes on to ask an even larger question, one that is imposing itself almost everywhere in the world today: what is a "nation," anyway?

All too often, this question is asked—by Bosnians, Chechens, or Kurds—in the midst of horrendous bloodshed. It is also asked, under more merciful circumstances, by Quebecois and Catalans, and for that matter by Americans pondering the implications of multiculturalism. Although Soyinka poses the question with an admirable sense of urgency, his answer does not get us very far.

Soyinka sharply criticizes the principle, considered virtually sacred by the Organization of African Unity and indeed by almost all African governments, according to which the borders of each presently existing state are inviolable and permanent. He points out that this principle serves the interests of whichever rulers are in control of a given "nation space," and not necessarily the interests of the people who have to endure their rule. "A nation," he writes correctly, "is a collective enterprise; outside of that, it is mostly a gambling space for the opportunism and adventurism of power."

Equally bracing is Soyinka's rejection of a favored piece of conventional wisdom. The chaos into which Nigeria and other African countries have descended has routinely been blamed on their former colonial masters. But, as Soyinka points out, there is more to it than that. The colonial history of Africa does indeed do little credit to the European powers; but in the post-colonial period, the wounds have been largely self-inflicted. "What color," Soyinka asks "are the hands that dehumanize our African peoples today, as they have done for nearly four decades of independence?"

BEYOND THESE assertions, however, Soyinka is not especially helpful in explaining the determining causes of the national debacles of which he writes. Perhaps he comes closest when he observes, "Man is first a cultural being. Before politics, there was clearly culture."

The relation of African cultures to African politics is indeed one of the big puzzles in the world today. Soyinka is hardly alone in ultimately failing to come to grips with it, but he is certainly right to note the lack of congruence between the new political and the old ethnic/cultural maps of the continent, which imposes a formidable handicap on any society seeking to take off into modern economic development. (This handicap, incidentally, was not faced by the successful societies of East Asia.) Other factors at work include the general absence of an idea of private property, especially in the ownership of land; patriarchal and polygamous forms of family life; an ethic of *machismo*, in comparison with which the Latin American version seems positively feminist; and still other features of African culture that may have functioned well in a premodern economy but are clearly dysfunctional under conditions of modernization and urbanization.

EVEN IF we understood more fully the cultural factors that have contributed to the fiasco of African politics, however, we would still be a long way from prescribing remedies. Cultures do not change easily, and they are particularly resistant to deliberate, policy-driven interventions. In Africa, any initiative in this area would almost certainly have to involve religion—now as always a force conducive to swift and radical cultural change. Nigeria, however, seems an unlikely candidate for an experiment of this kind, which perhaps ironically has a greater chance of success in Nelson Mandela's South Africa. Indeed, the outcome of *that* new cultural/political enterprise will carry important lessons not only for Nigeria but for the rest of sub-Saharan Africa.

But I do not mean to criticize Wole Soyinka for the book he did not write. The one he did write is both useful and moving—a "*j'accuse*" that bravely eschews the tactic of blaming all Africa's woes on racism, imperialism, and colonialism; a ringing affirmation of humanity; and an instructive reflection on the moral foundations of nationhood.

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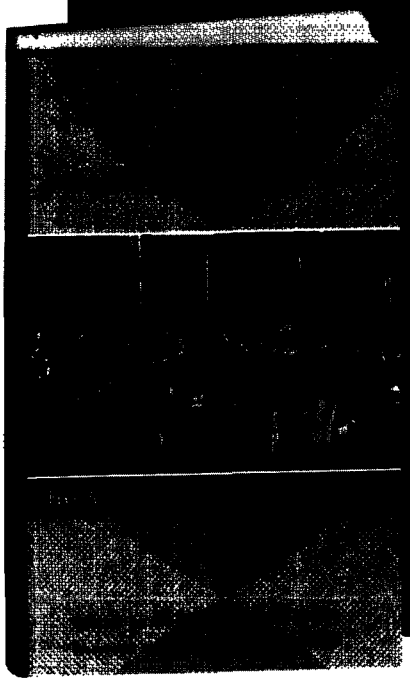

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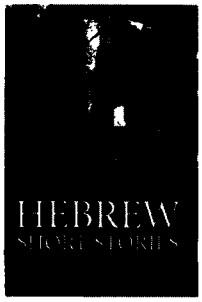

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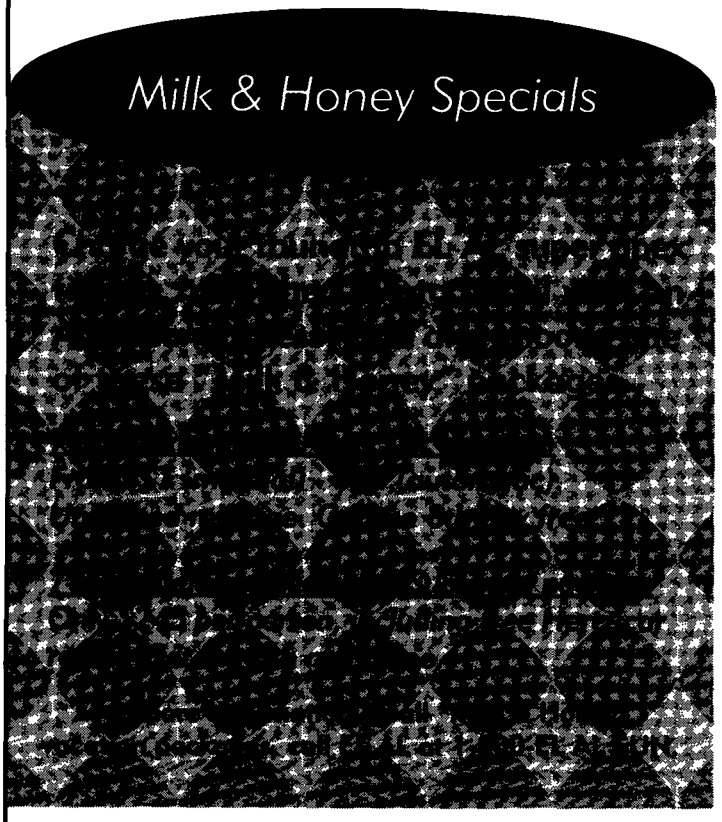

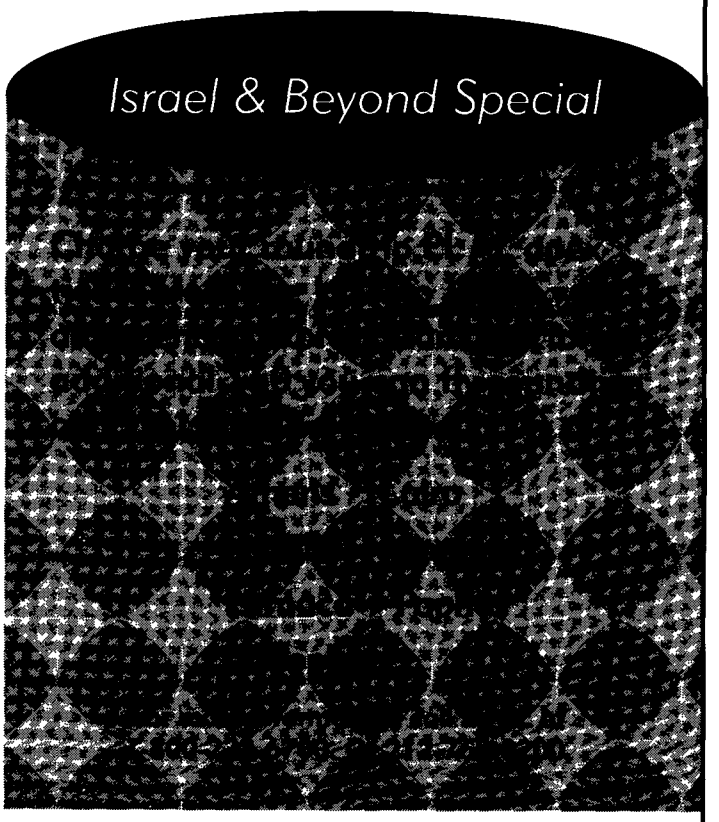

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